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CANADIAN CRIMINAL JUSTICE ASSOCIATION - ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

SPECIAL ISSUE ON INDIGENOUS AND RACIAL JUSTICE

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Kita Nia Écoute-moi© Listen to Me

PHOTO CREDIT: The Artist [Mamijo (Papillon Lune) / Kurt Nicholas Rougier]

The JUSTICE REPORT contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada.

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EDITORIAL

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INDIGENOUS AND RACIALIZED JUSTICE: SEGREGATION IS NOT A PATHWAY TO HEALING

Discussions of the high rates of Indigenous and racialized people in the Canadian criminal justice system are a common narrative in justice circles today. This punitive trend is also well documented through commissions of inquiry, parliamentary studies and hearings, correctional watchdog investigations, multiple government reports and even media accounts, among others. The persistent racialized trajectory of criminal justice is similarly well documented across other settler countries like Australia, New Zealand, and the United States (Axster, et al. 2021[1]). These ongoing and comparatively similar temporal and spatial trends of modern justice are not happenstance but compel us to consider colonialism's current arrangements as part of a criminal justice system.

To understand and address criminal justice interventions in the lives of Indigenous and racialized people, the practices today must be viewed within the broader problematic of ongoing colonialism. These ongoing colonial practices include the policing of Black lives, widespread boil-water advisories across reserves, the waves of hardship and grief from the unmarked graves of Indigenous children forced into residential schools, the exponentially high rates of Indigenous children in the child welfare and foster care systems, the thousands of missing and murdered Indigenous women, girls and Two-Spirit+ people, and economically starved communities or "poverty by design" (Brittain & Blackstock, 2015[2]) to only name a few. The hardships for Indigenous and racialized people are innumerable and immeasurable. By contextualizing the mimetic relation of the settler-colonial histories of the nation state, this Special Issue shows how such a colonial reality is still made possible through the criminal justice system.

Thalia Antony and Harry Blagg in Australia provide important insight into how European advancements like the automobile became violent colonial technologies used to remove Indigenous people from their homes and public spaces. From New Zealand, Antje Deckert, Adele Norris, and Juan Tauri illustrate invasive and illegal policing interventions among Māori youth. In the Canadian context, El Jones and Vicki Chartrand discuss the anti-Black and anti-Indigenous character of the Canadian state, highlighting how the propensity to target Black and Indigenous people is characteristic of old but ongoing colonial mythologies. In the young researchers' corner, Emily Lampron and Sahr Malalla expose the racialized character of criminal justice in the application of Dangerous Offender designations and risk assessment instruments on Indigenous people, respectively. Finally, and most importantly, Daryle Kent, Zakaria Amara, and Charles Jamieson, all currently or formerly incarcerated and racialized persons, share unique insights into their journeys and survivance of a system so clearly designed to target them.

Understanding how the structures and logics of colonialism persist today within the criminal justice system is essential in addressing Canada's so-called "past harms." A past that is separated from the present and that exonerates our systems from right action is not a pathway to healing. ■

NOTES

1. Axster, S., Danewid, I., Goldstein, A., Mahmoudi, M., Tansel, C. B., & Wilcox, L. (2021). Colonial lives of the carceral archipelago: Rethinking the neoliberal security state. *International Political Sociology 15(3)*: 415-439.

2. Brittain, M., & Blackstock, C. (2015). *First Nations Child Poverty: A Literature Review and Analysis*. Ottawa: First Nations Child and Family Caring Society of Canada.

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INDIGENOUS AND RACIALIZED JUSTICE: SEGREGATION IS NOT A PATHWAY TO HEALING

Discussions sur les taux élevés d'indigènes et de personnes racialisées dans le système de justice pénale canadien sont un récit commun des milieux de la justice. Cette tendance punitive est aussi bien documentée par les commissions d'enquête, les études et les audiences parlementaires, les enquêtes des organismes de surveillance correctionnelle, les multiples rapports gouvernementaux et même les comptes rendus des médias, entre autres. Cette trajectoire racialisée persistante de la justice pénale est également bien documentée dans d'autres pays d'émigration comme l'Australie, la Nouvelle-Zélande et les États-Unis (Axster et al., 2021[1]). Ces tendances temporelles et spatiales continues et comparativement similaires de la justice moderne ne sont pas le fruit du hasard, mais nous obligent à considérer les dispositions actuelles du colonialisme.

Pour comprendre et traiter interventions justice pénale dans la vie des autochtones et des personnes racialisées, il faut aujourd'hui envisager ces pratiques dans le cadre plus large du colonialisme actuel. Parmi les pratiques coloniales courantes, il y a le maintien de l'ordre dans la vie des Noirs ; les avis d'ébullition de l'eau sur les réserves ; la vague de difficultés et de chagrin provoquée par les tombes non marquées des enfants indigènes envoyés de force dans les pensionnats ; les taux exponentiellement élevés d'enfants indigènes placez en famille d'accueil ou ailleurs dans les systèmes de protection de l'enfance ; les milliers de femmes, de filles et de personnes bi-spirituelles indigènes disparues et assassinées, et les communautés affamées sur le plan économique – pauvreté à dessein [« poverty by design »] (Brittain & Blackstock, 2015[2]) – pour ne citer que quelques-unes. Les difficultés de cette réalité pour les autochtones et les personnes racialisées sont innombrables et incommensurables. En contextualisant la relation mimétique entre les histoires coloniales par ailleurs extrêmement diverses de l'État nation, ce numéro spécial montre comment une telle réalité coloniale est toujours possible par l'entremise du système de justice pénale.

Thalia Antony et Harry Blagg, en Australie, donnent un aperçu important de la manière dont les avancées européennes, comme l'automobile, sont devenues des techniques coloniales violentes utilisées dans l'enlèvement de force des gens de leurs maisons et des espaces publics. Des auteurs de la Nouvelle-Zélande, Antje Deckert, Adele Norris et Juan Tauri, illustrent des interventions policières illégales contre les jeunes Māori. Dans le contexte canadien, El Jones et Vicki Chartrand abordent le caractère anti-noir et anti-indigène de l'État canadien. Ils soulignent que la propension aujourd'hui à cibler ces populations est une conséquence caractéristique des veilles mythologies coloniale. Dans le coin des jeunes chercheurs, Emily Lampron et Sahr Malalla exposent le caractère racialisé de la justice pénale en matière d'application des désignations de délinquants dangereux et des instruments d'évaluation des risques sur les populations autochtones.

Enfin et surtout, Daryle Kent, Zakaria Amara et Charles Jamieson – personnes racialisées qui ont été, ou sont toujours, incarcérés – partagent leurs points de vue sur leur parcours et survivance d'un système si clairement conçu à les cibler. Comprendre comment les structures et les logiques du colonialisme persistent aujourd'hui au sein du système de justice pénale est essential pour surmonter lesdites «préjudices du passé» du Canada. Un passé qui est séparé du présent et qui exonère nos systèmes de toute action juste n'est pas une voie de guérison. ■

NOTES

1. Axster, S., Danewid, I., Goldstein, A., Mahmoudi, M., Tansel, C. B., & Wilcox, L. (2021). Colonial lives of the carceral archipelago: Rethinking the neoliberal security state. *International Political Sociology 15(3)*: 415-439.

2. Brittain, M., & Blackstock, C. (2015). *First Nations Child Poverty: A Literature Review and Analysis*. Ottawa: First Nations Child and Family Caring Society of Canada.

We acknowledge the traditional custodians of this land and pay our respects to elders of past, present, and future.

Just Futures: Race, Nation, and the State

A Conversation with EL JONES & VICKI CHARTRAND

EL JONES, the fifth Poet Laureate of Halifax, is a spoken word poet, an educator, journalist, and a community activist living in African Nova Scotia.

VICKI CHARTRAND, PhD, is a Mama and Associate Professor in the Sociology Department at Bishop's University, Québec, the traditional and unceded territory of the Abenaki people. Her general research includes penal and carceral politics, modern day colonialism, grassroots justices and collaborative methodologies. She also has over 20 years of experience advocating for and with women and children, Indigenous communities, and people in prison. Dr. Chartrand is founding member of the Justice Exchange Research Centre, a collective uniting diverse justice stakeholders including those who are or have been incarcerated. Vicki.Chartrand@ubishops.ca | justiceexchange.ca

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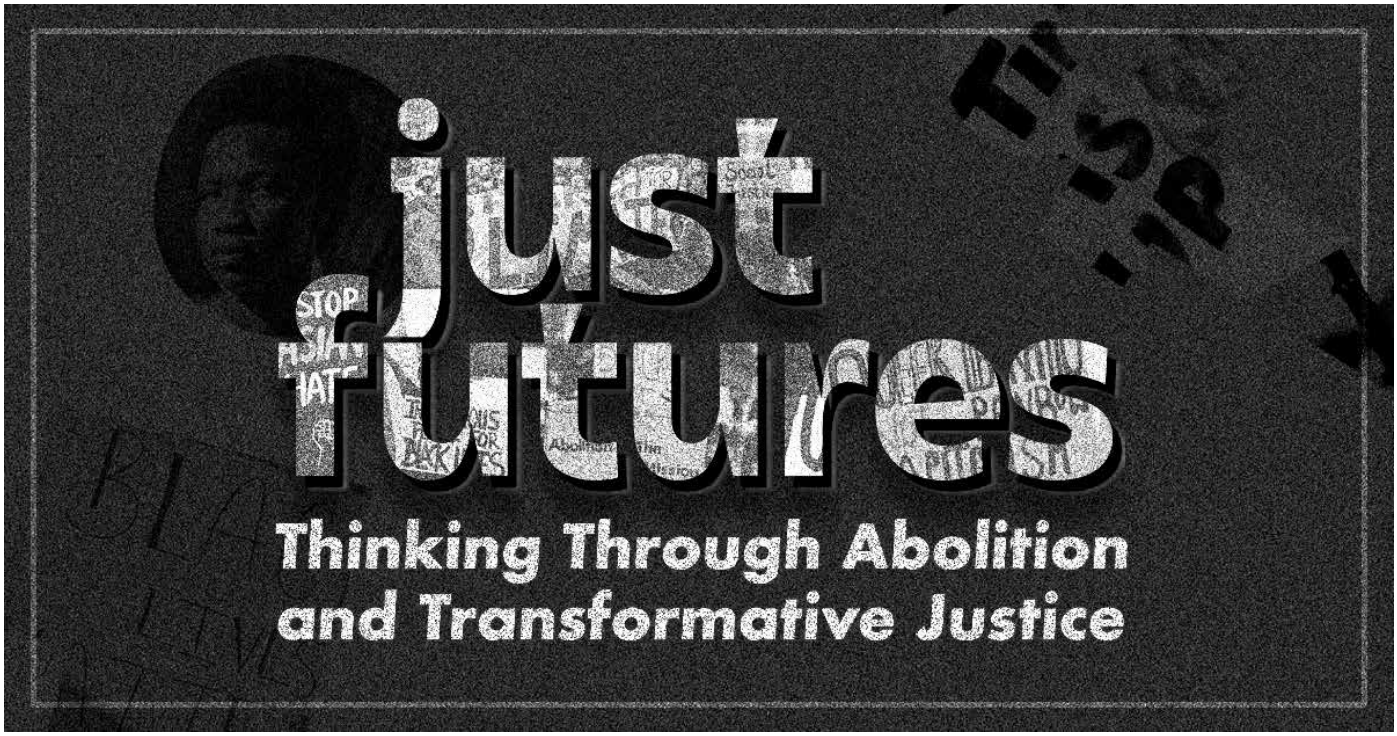
This Conversation with El Jones and Vicki Chartrand is adapted from a panel series (Just Futures) held by the UBC Social Justice Institute Graduate Student Association's on February 7, 2022. Tremendous gratitude goes to Lindsay Nkem, David Ng, Elaina Nguyen and Shannon Srivastava for their work, energy, and spirit in organizing this panel and series: www.justfuturesubc.wordpress.com. This conversation looks at how race remains a central organizing feature of colonialism and how it has mushroomed into multiple discriminations. Dispelling the myths of Canadian tolerance, Chartrand and Jones link the violence in prisons, criminal justice systems, and society generally to the free-world's history of Black slavery, Indigenous genocide, socio-economic exclusion of non-White, non-European immigrants, and indentured workers, with the current rise in discrimination and violence against groups also having visible markers (such as sex workers, queer and trans people, people with mental illness or living with disabilities). These systemic processes extend across all public and private spaces through mass incarceration.

HOW ARE INSTANCES OF RACIAL PROFILING CONNECTED TO THE WORK THAT YOU DO PARTICULARLY WITH PEOPLE IN PRISON?

EL: First, Charmaine Nelson (2010; 2017) points out that Blackness is a surveillance technique instilled by White people in the shadow of slavery. Unlike other groups who were indentured, like the Irish, Blackness acts as a discursive signifier that connotes you as a non-member of free society. In other words, Blackness has been and remains a visible marker for surveillance with its origins rooted in the laws of slavery.

The social structure that emerged following the abolition of slavery in Canada produced technologies and practices known today as racial profiling and police surveillance. The surveillance function of Black people is built into the very nature of White supremacy in a colonial state. For example, in the case of Shelby McPhee – a Nova Scotian student who was racially profiled at University of British Columbia – it is not an isolated or random incident that the student was targeted but a repeated pattern of policing Blackness. Again, stemming from a long embedded belief that Black people are not a part of or belonging to a public landscape, but rather as belonging to some form of containment system like the prison, like detention centres, and just like the plantation.

These persistent beliefs also presume that some people, predominantly White people, deserve safety and are the members of the so-called public or a "free" society that excludes Indigenous people, Black people, Immigrants, other racialized people and—beyond race—people with visible markers like sex workers, queer and trans people, and people with mental illness or disabilities, among many other people with visible differences. The point of policing is and has always been to police us out



justfuturesubc.wordpress.com

of public spaces and contain us to specific, often impoverished areas or carceral sites.

The blackening out of public space is evidenced, for example, by the trucker's convoy in Ottawa in 2022, which persisted for weeks despite all the traffic obstructions and noise violations it produced. Afrofest in Toronto, on the other hand, was shut down almost immediately for noise complaints. This is just one example of how Black people are seen as contaminating space, such as air space with our music. This example is not, however, a call for the police to right the error of who they do and do not police; it is to highlight the surveillance function of the police and its role in maintaining (White) social order.

For Indigenous people, as Sherene Razack (2002) points out, Canada was projected as an open and empty space claimed and tamed by White people. It is mythologized as a "wild" space and the wildness of the land is synonymous with the wildness of the people. Anyone who existed before settler colonization is erased; anyone who comes after must be grateful to be a part of the "true north strong and free" mythology, even if they will never belong to the White symbolism of hockey, beaver tails, and flannel. Anti-Blackness is built into the entire history of surveillance and the associated symbolism remains fundamental to the social and political order of this country.

VICKI: I could listen to El all day, but I would like to build on what she has been sharing. I started going into prisons almost 25 years ago and, having experienced abuse in my own life, it was not hard for me to make the links and parallels between interpersonal violence with the violence of the prison. Which is not to say it is the same level or intensity of violence but, as El points out, it is a continuum of a type of violent technology to regulate and suppress people in very specific ways. As a result, I came into this field as an anti-violence worker. It was not until I moved to the central interior of British Columbia in 2008 that I started to understand how 'race' is a central organizing feature of this violence.

At that time, I was hired to work at a women's anti-violence shelter. When I arrived, I noticed most of the beds were empty and, for the most part, there were only ever two or three women in the shelter, and mostly White women. I know that violence against women and children is endemic to our social fabric and, additionally, I was living in a small rural town where a host of all kinds of violences happen. When I questioned this arrangement, I was told by many of the workers that some women were not allowed in the house because they were "dangerous", "addicted", "violent", or "unsafe" for the children, even though in the 20 years or so history of the shelter there had never been one incident of violence. Of course, it did not take long to see it was predominantly Indigenous women being given these labels; a 'legal' means of denying them services and turning them away from the shelter.

It is interesting how the same rhetoric and discourses of "dangerousness" that are applied to people in prison, many of course who are also Black and Indigenous, are also applied to those who are considered "victims" within the criminal punishment field. Whether in a prison or shelter, those who are colonized are also the first to be problematized and criminalized. This is an ongoing colonial trajectory that treats people as not deserving of supports and services on one hand, and as belonging to punitive and carceral spaces on the other.

Race is the bifurcation that allowed entire populations to be enslaved, to be eliminated and their lands stolen, among many other kinds of violence of modernity. Race, gender, sexuality, among other bifurcations are all offered up to uphold and sustain White supremacy, heteronormativity, patriarchy among other normative frameworks, as seen with the trucker convoy in Ottawa who wanted to insert and re-establish White presence, especially in the wake of Black Lives Matter.

The combining effects of colonial logics, patriarchy and White supremacy, for example, keep women and children in violence, silenced or invisible, displaces colonized and racialized people from public spaces, dispossess people from life-sustaining resources and relations, and segregate and eliminate specific populations through carceral spaces like the prison.

WHAT ARE SOME KEY INSIGHTS YOU CAN OFFER ABOUT CANADA'S PRISON SYSTEM AND HOW IT UNIQUELY FUNCTIONS TO CRIMINALIZE AND INCARCERATE BLACK AND INDIGENOUS PEOPLE?

EL: One of Canada's core colonial mythologies is that we are unique; that we are kinder and gentler than our southern counterpart. It is often depicted that the US is exceptional in police shootings and

incarceration. In Canada, we like to pretend that we have an alternate history of colonialism and current carceral practices. It is important to recognize that Canada is implicated in the same history as the US and the same anti-Blackness and anti-Indigeneity practices that we recycle and recreate today. We are reliving the same moments of colonialism using techniques that are continuously updated or "modernized" so the system appears benevolent or innocent or gentler and kinder when it has the same violent impacts.

Today, Indigenous self-determination and sovereignty over lands is a threat to resource extraction, just as it was a threat to colonial settlement and land theft. Instead of residential schools, we see child removals through child protection. In addition to reserves and the residential schools, the prison remains a technology for removing Indigenous people from the land and out of public spaces. The Indian Act also wrote Indigenous women out of their nations in a way that instituted the violence we see against them today.

For Black people such Abdul Abdi, he was a child refugee who came to Nova Scotia and was taken into the foster care system with his sister Fatuma without ever being given citizenship. As an adult, he was criminally charged and then threatened with deportation, even though he had been in the so-called "care" of the State for his entire childhood. This is not just the failure of paperwork; it is the violence of paperwork. The rhetoric of benevolence around immigration masks the day-to-day violence of the system.

This kind of routine violence is also normalized in the prison. We see this in case files that are continuously used against you; failing to intervene when someone is self-asphyxiating, ignoring people when they depress their emergency buttons in their cells, 23-hour lockdowns that have become just a function of COVID-19, not giving Muslim people the right food on Ramadan, pepper spraying people congregated in groups to watch TV, and the list goes on. All of this is not even seen as particularly remarkable in a prison but accepted as just what happens every day inside the walls – in reality, violence is fundamental to the function of the Canadian prison.

Any kind of response to the ongoing prison violence keeps offering up prison as a remedy. Recently, I read about corrections introducing culturally sensitive cells where they put artwork on cell walls for Indigenous people. Indigenous people are being culturally defined in prison by pretending that artwork in a cell will bring culture to people. It might seem "innocent", but this practice perversely twists Indigenous culture within the prison.

It is the same for Black people. If we can just have more Black guards, if we can just have Black wardens, if we can just have a Black mental health program, then it will be all good. If we just make cells wide enough for wheelchairs, now everybody in a wheelchair can just go to prison.

VICKI: I am reminded of when I was in Australia collaborating with Beyond Bars and Sisters Inside, we filed a human rights complaint in each Australian state for discrimination against women in prison based on race, gender, and disability. After the statewide complaint was launched, prison administration initiated the building of a "human rights" prison in the Australian Capital Territory. Now, people can go to prison to have their rights enacted?

Even the term "Indigenous overrepresentation" is problematic. Not only does it assume that there is a "right" level of incarceration, but it limits the conversation to an issue of proportionality and obfuscates the violence of the prison. This kind of language and ensuing reforms are a part of the pedantic violence of the prison that El describes. Drawing on Saidiya Hartman's (1997) work, these penal approaches detract from and normalize the violence of incarceration itself. It is Indigenous and Black people who experience the most punitive and most violent aspects of the system through dangerous offender designations and other indeterminate sentences, maximum security classifications, involuntary transfers, solitary confinement, and forced interventions among others – all euphemisms for violence – but rarely ever contextualized or recognized as such.

When we do hear about the violence of the prison, it is usually the most extreme examples, such as when guards watched on as a young woman self-asphyxiated to the point of death, a suicide of a young Indigenous man after being isolated in solitary confinement for 162 continuous days, the death of an Indigenous woman as a result of a health condition because guards ignored her emergency cell button more than 25 times. Only recognizing the more extreme kinds of violence found within the

prison make the more pedantic forms of violence of incarceration acceptable for both those who live and work there. This becomes quite evident with the level of trauma or what is termed as PTSD for those leaving the prison, which rarely gets explored in Canada (Dalal, 2021).

Moreover, more often than not, we only hear about these violences when they are witnessed and/or exposed by White bodies with all the colonial titles. We have normalized the prison as a space where Black and Indigenous people belong, we normalize the day-to-day violence of the prison against them, and only make visible some kinds of violence and only through White bodies.

HOW CAN WE DIVEST FROM THESE CARCERAL COLONIAL LOGICS?

VICKI: Vivian Saleh-Hanna (2015) points out that when we shifted from slavery to criminalization and imprisonment and, in the case of Canada, from reservations and residential schools to prisons, at no point was the colonizer ever put on trial for crimes against humanity. The discourse simply shifted from savage to criminal. Part of this work is to see that we need to stop participating in the discourses and reforms of the system and start investing in people and communities. For me, "Unearthing Justices: A collaborative research project for the MMIWG2S+ people" has been one way of moving towards community building.

EL: Michael Jackson has talked about how reform is part of the prison cycle that keeps the system alive. In the end, almost everything ends in more funding and more investment in the system, whether it is more training, more cameras, more human rights, more whatever. Nobody thinks that somebody like Paul Bernardo should not be somewhere away from people because he is dangerous, but that has nothing to do with mass incarceration.

To be an abolitionist is to enter a very complex space that we have all struggled with. It is a lot of self-reflection, challenging yourself, and feeling uncomfortable. It is difficult work; it is traumatic work because it is the work of trying to think outside of and build something other than what we have. ■

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RÉSUMÉ

Just Futures: Race, Nation, and the State

Une conversation avec EL JONES et VICKI CHARTRAND

Conversation adaptée d'une série de panels organisée par le Social Justice Institute Graduate Student Association de University of British Columbia dans le cadre Just Futures le 7 février 2022 (**www.justfuturesubc.wordpress.com**). Nous tenons à remercier Lindsay Nkem, David Ng, Elaina Nguyen et Shannon Srivastava pour leur travail, leur énergie et l'esprit dans lequel ils ont organisé ce panel et cette série. La conversation porte sur la façon dont la race était un élément central de l'organisation du colonialisme qui s'est aujourd'hui transformée en de multiples discriminations. Jones et Chartrand dissipent les mythes de la tolérance canadienne et établissent un lien entre la violence dans les prisons, les systèmes de justice pénale, et la société en général - et de l'esclavage des Noirs dans le monde libre, le génocide des Autochtones, l'exclusion socio-économique des immigrants/travailleurs non blancs et non européens (p. ex. les Chinois), ainsi que la montée actuelle de la discrimination à l'égard d'autres groupes (comme les travailleurs du sexe, les personnes homosexuelles et transgenres, les personnes atteintes de maladie mentale ou vivant avec un handicap). Ces processus systémiques s'étendent à tous les espaces publics et privés par le biais de l'incarcération de masse.

Colonial Automobility and Roads to Resistance

THALIA ANTHONY, JUANITA SHERWOOD & HARRY BLAGG

Positing the automobile as a tool of colonial domination, the authors discuss its uses over time, such as by colonial settlers taking Indigenous lands; law enforcement's forcible taking of Indigenous children to residential schools and missions; and in race-specific, high-speed police (pursuit) chases that end in preventable deaths. One Inquest cited police driving out of control (unaware they were travelling at 134 kms per hour) during a 21-second pursuit of a young Aboriginal driver (being chased only because his automobile seemed "dodgy" to police patrollers). The authors report that some First Nations communities have countered such necropolitical uses of the automobile by 'getting there first' using Night Patrols by community members capable of dispute resolution and, thus, local community crime circumvention without police assistance. Anthony, Sherwood and Blagg fathom this Indigenization of the automobile as a multi-layered act of resistance, actualizing Aboriginal self-determination and traditional justice practices. It is noteworthy, while this article focusses exclusively on Australia's colonial domination of First Nations people, the obvious parallels with the settler-colony/Indigenous Peoples history of Canada and other Western nations will speak volumes to Canadian readers.

THE COLONIAL POLITICS OF VEHICLES

Colonization has come to be characterized by many things – weapons, prisons, poisons, and missions. More subtle, and yet just as powerful, is the automobile as a colonizing force. The automobile is imbricated in a range of colonial interventions from the nineteenth century in the Australian colonies such as policing and transporting First Nations people[1], welfare authorities stealing First Nations children, and in the takeover of land by settlers, especially in central and northern parts of Australia. The arrival of the automobile into First Nations communities in the north and centre of Australia came to signify the invasion and destruction of First Nations societies, embodying harm to land, people, and ways of life. In urban settings, the automobile has been weaponized in the chase where First Nations people are pursued by police and White vigilantes (see Tranter and Anthony 2019). The automobile is a source of *necropolitics* – technologies of control and discipline that subjugate dispossessed life to the power of death (Mbembe, 2003:13). This technology continues to shape colonial oppression, including most vividly in the police use of vehicles to chase or contain First Nations people that leads to their deaths.

Where the automobile has been a mechanism of control, it has also been Indigenized by First Nations people – originally Aboriginal grandmothers in the Northern Territory in the form of the "Night Patrol" – to provide safety to community, assert cultural protocols and enact sovereignty. In this way, the automobile has enabled new practices of Aboriginal laws to subvert and estrange social meanings associated with automobility in the West. It is a form of resistance that demonstrates Aboriginal "negotiation rather than negation", to use the words of postcolonial scholar Homi Bhabha (1994, p. 28). It emerges in practises of the Night Patrol as well as the innovation of *Bush Mechanic*s – a Warlpiri television show that highlights ingenuity of Warlpiri ways of knowing and doing such as in the resurrection of worn-out cars for driving or use as places of gathering or sleeping. This article highlights the repurposing of the automobile in Aboriginal communities to subvert the terror and death it has come to symbolize.

COLONIAL WEAPONIZING OF THE VEHICLE

The colonial occupation of central and northern Australia in the early twentieth century saw the transition from horseback and wagons to automobiles. Pastoral owners who invaded Aboriginal land brought British motor cars to "explore" and assert "claims" to land – claims which

were based on the legal fiction that the Crown had pre-existing title. This fiction was subsequently overturned by the High Court of Australia in *Mabo v Queensland* (No 2) (1992) 175 CLR 1, [49] (Brennan J).

The motor vehicle was graphically implicated in the process of child removals, known in Australia as the "Stolen Generations" of Aboriginal children[2], when violent removals of Aboriginal children from their mothers who saw them forcibly thrown by officials into the back of a pickup truck to be transported to institutions or White families. Parents who resisted would be punished for breaching the Aboriginal Protection Act, which enabled state officials in the role of Aboriginal Protector to control all aspects of life, including where their children resided.

IMAGE: *Rabbit Proof Fence* (2002). Film directed and produced by Philip Noyce.
SOURCE: https://wall.alphacoders.com/big.php?i=471340

Rabbit Proof Fence (2002), a film based on a true story set in 1931 of the stealing of three Aboriginal girls under Western Australian state's assimilation policy of forcibly removing Aboriginal children from their families. It is based on the book by Doris Pilkington Garimara, the *Rabbit-Proof Fence* (1996), which details her family's experience as survivors of the Stolen Generations.

NECROPOLITICS OF CARCERAL AUTOMOBILES

Continuing the operationalization of the vehicle in the pursuit of colonialism in the twenty-first century, First Nations deaths in custody in Australia perpetrated with or in police vehicles reveal the lethal threat of White automobility. This threat is akin to that of the murders and disappearances of Indigenous women and girls along the Highway of Tears in British Columbia, Canada. This lethal threat is matched with the gross systemic inadequacies in investigating the deaths, revealing the cruel indifference to Indigenous lives lost on roads.

In Australia, law enforcement and security vehicles have been mobilized in ways that facilitate First Nations deaths. There has been a spate of pursuits taking the lives of young First Nations boys, including the 17-year-old Kamilaroi boy TJ Hickey (2004) and the 16-year-old Dunghutti boy Jai Wright (2022). Each of them was killed in the course of a police pursuit, while riding a bicycle and trail bike respectively. While the passing of Jai Wright continues to be investigated, the killing of TJ Hickey, according to his family and Aboriginal eye witnesses, involved chasing down TJ, resulting in him becoming impaled and killed on a fence in Redfern, Sydney (Anthony 2018, 46). Police have never been held responsible for deaths in custody. Rather than hold police to account, First Nations lives continue to be sacrificed to protect the face and force of police authority on the roads.

The use of a vehicle to propel death and the associated lack of accountability are illustrated in the 'killing' death of a Gunnai, Gunditjmara and Wiradjuri man, Raymond Noel Thomas, pursued by Victorian (AU) police in 2017. The fatal crash occurred within 21 seconds of the commencement of a police pursuit. Raymond Noel was driving his car to a local supermarket to purchase chocolate. The police pursued Raymond Noel because they believed the Commodore vehicle he was driving looked "dodgy", notwithstanding there was "nothing untoward about the way the Commodore was being driven" (2021, 12). A high-speed chase at 134 kilometres/hour ensued, resulting in the crash that killed Raymond Noel.

For police to perceive a vehicle as "dodgy" because it has an Aboriginal driver is not an isolated incident on the Australian colonial landscape. The racialized nature of policing Aboriginal drivers in the Australian colony also resonates with "driving while Black" in North America (Jefferson-Jones 2021). The parents of Raymond Noel described how their son had been "racially profiled and pulled up in the street and, you know, searched for no reason" since he was a child (2021, 28). In relation to the police pursuit, his parents said that "Ray did nothing wrong. The police should not have followed Ray that night and their decision to follow him led to his death".

The Victorian Coroner investigating the death found the pursuit was "not justified", but refused to find the police responsible for Raymond Noel's death or to recommend disciplinary action for the police officer (*Findings into Death with Inquest of Raymond Noel Lindsay Thomas*, Coroners Court of Victoria, 2021, 22). The vehicle was used by the coroner to break

the true chain of causation and absolve police of responsibility. On the one hand, the coroner referred to the police sergeant driving the vehicle as not being in control of the vehicle, citing the sergeant's claims he did not know he was driving at a speed of 134 kms/hr (Inquest 2021, p. 17). On the other hand, the coroner referred to the victim as losing control of his vehicle (Inquest 2021, 16) and found this as the cause of the crash, rather than the terror incited in Raymond Noel by the police chase.

The necropolitics of the law enforcement automobile extend to death within the vehicle as evidenced in Western Australia. The confinement of Ngaanyatjarra Elder Mr. Ward in the back of a prison van resulted in third-degree burns and death by heatstroke. In 2008, prison transportation contractors G46 transported Mr. Ward 360 kilometres through the desert from his remote community of Laverton to Kalgoorlie after being denied bail (Hirini, 2018). The police had charged him with a driving offence. The two White contractors did not check on him once during the journey (*Inquest into death of Ian Ward*, Western Australian Coroner's Court 2009, 83-84). This treatment of Mr. Ward is a marker of the White legal system's contempt for the Aboriginal legal system that Mr. Ward represented. He was a Ngaanyatjarra law holder who had valuable knowledge and authority in relation to his people's laws, artist, carer of family and kin, and high-standing community member. Penal authorities were not held to account in this horrific death despite the fact that inhumane treatment resulting in death during transportation is a crime and a terrorizing edict for First Nations people.

SOVEREIGNTY ENACTMENT

Against the necro-automobile in the settler colony, Aboriginal people have harnessed the technology to bypass police by using their own (non-official community) patrols to de-escalate disputes where police may otherwise have intervened, to reclaim connections to Country (Aboriginal land), and strengthen cultures, laws and sovereignty. Motor vehicles are used by First Nations as a means of refusing to acquiesce to the controls of the settler colony, to escape its boundaries, and to assert competing sovereignties. Across Australia, there has been no official recognition of First Nations sovereignty. The land was stolen on the basis of *terra nullius*, yet First Nations sovereignty was never ceded. The colonisers did not enter into treaties or provide payment to First Nations people for their land – which contravenes international law. Aiming to nullify attempts by settlers to enter into treaties, the Proclamation of Governor Bourke 1835 (UK) implemented the doctrine of *terra nullius*, which would not be rejected until 1992 and the High Court case of Mabo (see above). First Nations people in many parts of northern and central Australia, nonetheless, have continued to practise their laws and cultures in the face of colonisation through enormous strength and resilience. Automobility has become a recent mechanism to express and practise sovereignty alongside ongoing ceremonies and the continuation of laws, language and culture.

In the 1980s, the Aboriginal and Torres Strait Islander Commission funded vehicles to facilitate the "Homelands" movement that enabled Aboriginal people to return to Country in central and northern Australia after decades of forced government settlement (Crane and Stanley 1985). Driving in the form of "cruising Country" (Frederick and Stefanoff 2011) or simply being in a stationary automobile also offers a mobile venue for re-connecting with Country, kin and culture. As Clarsen (2017, p. 58) explains, "cars offer a degree of autonomy". The use of the vehicle for cultural and Country-centred purposes constitutes a form of sovereignty and resurgence by which First Nations communities counteract mobility control by the State and the settler colonial roadscape that inflicts harms on First Nations lives.

A longstanding justice initiative by Aboriginal communities is the Night (or Community) Patrol. It harnesses the vehicle for patrolling activities and to enable transport of community members who may be unsafe on the roads alone. For Aboriginal patrolling, the vehicle has facilitated rather than compromised Aboriginal safety and circumvented state police interventions (see Blagg and Anthony 2015). Automobiles enable Aboriginal people to travel around their community to safeguard the well-being of members and act as gatekeepers. In central Australia, the Tangentyere Council Patrollers (2007, 3) found that the patrol diffused most community conflicts (fights, disputes, alcohol related harms) without police involvement. The service is also important for getting Aboriginal children home safe. These vehicle patrols keep the community safe rather than the fear, shame, and distrust generated by the police.

The longest standing Night Patrol in Yuendumu was established by Warlpiri grandmothers in 1991. These powerful Aboriginal women carved out roles in the community to regulate problems and offset police harms. The coordinator of the patrol explained the function:

"Everybody knows they're there so if you're going to go and smash cars up, you just never know when Night Patrol's going to come around the corner and you know that if those old women catch you, you're going to cop it". (Lee 2008)

CONTESTATIONS AND ABORIGINAL PATROLS

In 2007, the Federal Government of Australia declared a national emergency in Northern Territory Aboriginal communities on the basis that Aboriginal communities were 'dysfunctional' and restrictions on their self-determination would assist the 'safety and wellbeing of children' (Brough 2007). The effect was the implementation of the *Northern Territory National Emergency Response Act 2007* and related measures that watered-down Aboriginal tenure under the *Aboriginal Land Rights* (*Northern Territory*) *Act 1976* (ALRA), managed Aboriginal people's social security income, restricted alcohol in Aboriginal communities and installed new police and police stations with greater powers (including to enter homes without a warrant). This policy stance is known as the 'Northern Territory Intervention' and only applies to Aboriginal communities. It required suspension of the *Racial Discrimination Act 1975* that enacted the International Convention on the Elimination of Racial Discrimination. The *Northern Territory National Emergency Response Act 2007* allowed greater government control over Aboriginal lives with no evidence of increases in child safety; in fact, there are more Aboriginal children separated from families and in youth detention than ever before (Anthony 2017).

The outset of the Northern Territory Intervention was marked by the arrival of large Australian Defence Force vehicles, armoured personnel carriers. These war vehicles signalled to central Australian Aboriginal communities that their autonomy was under siege. It set terror into the eyes of all Aboriginal parents and grandparents who grabbed their children and ran; this is reminiscent of the terrors the armies of welfare authorities had brought previously to their homelands.

As the Intervention in the Northern Territory proceeded, policing was focused on Aboriginal drivers. Despite safe driving, they invariably found themselves within the criminal net. They were targeted for minor infringements and regulatory matters such as driving unlicensed, unregistered, and uninsured. These came to constitute a significant portion of court lists and prison rates (25% in the Northern Territory). Driving in Country became a dangerous activity. At the same time, the State denied Aboriginal people access to registration and licensing services, while communities often lacked professional mechanics to make cars roadworthy (Anthony and Blagg 2013).

In addition, the government appropriated Night Patrols to mould them according to government priorities around policing models of crime prevention and control. These policing practices evidence what Glen Coulthard (2014, 6-7) describes as schema of structured dispossession whereby the state both denies sovereignty and sustains First Nations existence in its own mould. The Federal government funded the extension of Night Patrols across remote Aboriginal communities in the Northern Territory, providing new vehicles, uniforms, and rules and regulations. No longer could community determine staff appointments, where they could travel, hours of operation, or protocols for working with community (see Turner-Walker 2010, 137). The strength of Night Patrols were the Elders, who were highly respected. Currently staffing of night patrols can include people outside of communities who do not have cultural authority, which undermines the internal strengths of communities. Overall, this resulted in the undermining of Aboriginal law and authority.

Government controls of Night Patrols has resulted in restricted activities, diluted cultural buy-in, and a decrease in the role of women in Night Patrols. The co-option of Aboriginal forms of automobility under the Northern Territory Intervention constituted a "deep colonizing" whereby attempts to undo colonial practices result in reinstatement of conquest institutions and erase the roles of culture, especially Aboriginal women, in cultural practices (Rose 1996). It was not, however, without resistance and refusal. Aboriginal communities in various parts of the Northern Territory have continued to run patrols outside of the "official" Night Patrol government program and set their priorities for how the community serves Aboriginal relationships and protocols.

The burden of government interventions in Aboriginal communities – especially since the 2007 Northern Territory Intervention – has intensified government controls over Aboriginal communities, including controls in relation to Night Patrols. The government has repurposed Night Patrols to adhere to government (rather than community-led) safety initiatives, which misappropriates Aboriginal-owned safety initiatives by moulding them to Western crime and safety frameworks. This power-play

represents not the completion of the colonial project, but its precarity. In this article, we glean how there is a "worlding" of this First Nations justice space by White power, bringing White worldviews, practises, and rules into play (see Spivak 1996). The overwhelming crush of colonial tenure seeks to threaten First Nations strategies to maintain and sustain sovereignty in everyday practices. However, the colonial project is never complete while offset by First Nations refusal, by subverting White government agendas, to acquiesce.

CONCLUSION

The motor vehicle symbolizes and materializes the extension of settler colonial cultures and economies. Its use as a colonial apparatus has facilitated the invasion and destruction of First Nations lands, brutalization of First Nations lives, and disruption of First Nations cultures, families, and ways of living. It instantiates White power and privilege and continues to be used by the settler State and everyday settlers to oppress, over-police, and deprive First Nations people. Vehicles loom large in carceral transportation and create sites of Aboriginal deaths in custody. By placing the spotlight on the settler-colonial necro-automobile, contemporary automobility comes into view not apart from but as an extension of the colonial technology of guns and weapons.

However, the motor vehicle also manifests as a form of First Nations appropriation of colonial culture for its own ends. First Nations people have used the automobile as an expression of 'refusal' of colonial cultures (see Simpson 2014), and instead to express their sovereign cultures. Through the Warlpiri grandmother's innovation of Night Patrols, the automobile represents an act of self-determination and resistance to colonial modes of policing. The automobile has been a means of serving and protecting First Nations communities and continuing cultural authority. It has both enabled Elders to address conflict resolution among kin, interact with young ones in community and keep their culture alive through the motor vehicle's ability to express culture and connections to Country. However, community night patrols have also been the target of government attempts to control and coerce activities of First Nations people in the Northern Territory. In this way, the automobile represents the dichotomy of settler-colonial dynamics – the colonial force of dispossession, dislocation and death matched with the strength of First Nations' resistance, refusal, and resurgence. ■

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RÉSUMÉ

Colonial Automobility and Roads to Resistance

THALIA ANTHONY, JUANITA SHERWOOD ET HARRY BLAGG

Les auteurs examinent l'utilisation du l'automobile comme un outil de la domination coloniale au fil du temps, notamment pour emparer des terres autochtones, amener les enfants autochtones dans des écoles résidentiels, et dans le cadre de poursuites policières à grande vitesse axées sur la race. Une enquête a révélé que des policiers ont perdu le contrôle de leur véhicule (sans savoir qu'ils roulaient à 134 km/h) au cours d'une poursuite d'un jeune conducteur autochtone (poursuivi uniquement parce que son véhicule semblait « douteux » aux yeux des patrouilleurs). Selon les auteurs, certaines communautés des Premières nations ont contré ces utilisations nécro-politiques de l'automobile en « arrivant les premiers », en effectuant des patrouilles de nuit par des membres de la communauté capables de résoudre les conflits et, ainsi, de contourner la criminalité locale sans l'aide de la police. Anthony, Sherwood et Blagg considèrent cette indigénisation de l'automobile comme un acte de résistance qui actualise l'autodétermination autochtone et les pratiques de justice traditionnelle. Bien que cet article se concentre exclusivement sur la domination coloniale en l'Australie, les parallèles évidents avec l'histoire des colonies de peuplement d'autres nations occidentales seront très parlants pour les lecteurs canadiens.

An Act of Racialized State Violence: New Zealand Police Take Extralegal Photographs of Māori Youth

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Racialized 'crime strategy' in New Zealand hails from the 19th century and was solidly reinforced over time within the entire justice system – the courts, the prisons, and parole boards. After integrating the sweeping Māori urbanization between WW2 and 1966, the economic downturn of the 1970s, and the subsequent multipronged State violence inflicted on Māori, the authors zero in on 2021 to explore the unlawful photographing of Māori children by New Zealand Police as an act of State violence. The growing targeting, unwarranted data collection, and many other daily discriminations not only constitute a public health issue but are signs of more to come.

INTRODUCTION

Whether a person enters the criminal legal system in New Zealand is not only determined by who commits a criminal offence, but also by police decisions about who to surveil. The racialization of crime control dates back to the mid-to-late 19th century when the State enacted laws to hold Māori activists without trial for resisting the colonial project. The racialization strategy continued into the 20th century, with Māori experiencing excessive police surveillance, particularly after the post-war urban drift, resulting in higher arrest and charging rates compared to Pākehā (people of European descent). This situation has been exacerbated today by discriminatory bail, conviction, sentencing, and parole decisions that jointly contribute to the ongoing criminalization and hyper-incarceration of Māori youth, men, and women. That police practices remain racialized was most recently evidenced by the Armed Response Team trials in 2020, which targeted areas predominantly populated by Māori and Pasifika people (see, Norris & Tauri, 2022). In early 2021, racist targeting by New Zealand Police (NZP) reached new heights, when officers were exposed for having taken extralegal photographs of innocent Māori youth to gather "useful intelligence" for a national database that stores information for future criminal investigations. While the practice stopped and is under investigation, it is important to understand why NZP failed to question the legality of their actions in the first place and the effect this practice may have on the young people. After outlining a brief post-war history of Māori urban drift and the subsequent multipronged State violence inflicted on Māori, we argue that the extralegal photographing of Māori youth by NZP constitutes an act of State violence.

URBAN DRIFT AND DISCRIMINATION: A BRIEF OUTLINE OF THE POST-WAR HISTORY

Up until the Second World War, over 80% of the Māori population lived in rural areas. Thereafter, like many other Western nations, New Zealand experienced exponential economic growth. Increasing demand for labour in the cities, simultaneous slowing of the rural economy, and a

rapidly increasing Māori population led to an urban drift that has been described as the most rapid urbanisation of any population in the world (Derby, 2022). By 1966, over 60% of the Māori population lived in the urban centres of New Zealand. It was particularly young Māori who hurried to the cities, where they faced discrimination when looking for employment and accommodation. This racial discrimination contributed to Māori being mostly hired as unskilled labourers at subpar pay and residing in the less-desirable suburbs. When the economy took a downturn in the 1970s, Māori led the unemployment statistics (Awatere, 1984; Meredith, 2022).

A QUIET GENOCIDE? MULTI-PRONGED STATE VIOLENCE INFLICTED ON MĀORI CHILDREN

Throughout the urban drift, racial discrimination of urban Māori also extended into the criminal legal system (Jackson, 1988). Māori children were no exception. Police were more likely to arrest Māori than Pākehā children for the same offence, resulting in Māori children appearing before a New Zealand Children's Court four times more often than Pākehā children and being convicted more often. The number of convicted Māori children quintupled between 1961 and 1975 while the number of convicted Pākehā children only doubled.

Once convicted, Māori children were twice as likely to be sent to youth detention (borstal) compared to Pākehā children who were more likely to receive a fine (Awatere, 1984). The excessive institutionalization of Māori children within the criminal legal system was exacerbated by a mass uplifting of Māori children into State "care" – an estimated 50,000 between 1950 and 1980 (Stanley, 2016). Moving Māori children into borstals, faith-based institutions, hospitals, or foster homes imposed European culture and alienated them from Māori ways of knowing, doing, and living. The cultural deprivation was compounded by widespread physical, sexual, and emotional abuse including long periods of isolation and racial slurs (Abuse in Care Royal Commission of Inquiry, 2022; Stanley, 2016) – in short, it was a yet-to-be-acknowledged attempt of "a quiet genocide" (Smale, 2017).

The systematic institutionalization of Māori generated significant intergenerational trauma that contributed to the ongoing hyper-incarceration of Māori youth, men, and women (e.g., George et al. 2014; Deckert, 2019; McIntosh, 2022; Pihama et al., 2014). On the one hand, hurt people tend to hurt others. On the other hand, any previous institutionalization provided NZP with a justification for continued surveillance. By the 1980s, this multi-pronged infliction of State violence had led to a marked increase in incarceration rates for Māori, who now made up over 50% of the prison population (compared to 15% in the general population). Discriminatory decision-making in courtrooms and on parole boards is evident in the statistics. People of Māori descent are more likely to be convicted, less likely to be released on bail or parole, more likely to receive a custodial sentence, and receive longer prison sentences for the same crime compared to non-Māori (Cunneen & Tauri, 2016; Webb, 2011). However, the entry point to the criminal legal system remains at the level of the police. Their practices are crucial in the ongoing "arbitrary detention" (UN Human Rights Panel, 2014) of Māori.

SYSTEMIC RACISM IN NEW ZEALAND POLICING PRACTICES

The facts of a racially biased criminal legal system in New Zealand have been widely acknowledged not only in the academic literature but – concerning policing biases – to some extent also by New Zealand Police (NZP) Commissioner Andrew Coster (Forbes, 2020). Coster, in an interview discussing an end to the Armed Response Team Trials carried out in 2020 during which Māori made up half of all arrests, stated that police "need to look really carefully […] to make sure that our decisions about who we speak to, who we charge, when we use force, are fair" (Forbes, 2020). Coster followed the recognition of police bias by maintaining that biases exist with everyone, and thus are unintentional. Evidence of racialized police violence exists across indices—Māori are "six times more likely than Pākehā to have a gun pulled on them; nine times more likely to be tasered; 10 times more likely to have a dog set on them; and 11 times more likely to be pepper-sprayed" (Walters, 2020). Of people shot by NZP between 2009 and 2019, 66% were Māori and Pacific peoples (McKinnell, 2019). Despite the evidence, NZP representatives tend to 'prefer the more palatable term "unconscious bias"' over the term 'systemic racism' (Walters, 2020), thus whitewashing a core problem deeply embedded in the structures of NZP.

NEW ZEALAND POLICE TAKING EXTRALEGAL PHOTOS OF MĀORI YOUTH

These deeply ingrained racial biases, once again, made headlines in early 2021, when NZP surveillance tactics reached new heights. Officers

across the country took photographs of innocent Māori youth under the pretence of gathering "useful intelligence" (Hurihanganui, 2021). The pictures were uploaded into a national database that is used to solve current and future crimes. Some of the young people photographed were as young as 14 and parental consent was apparently not given in any of these cases.

> *"From what he can remember, there were two cops in the car. They just pulled up beside him and said that they needed to get his photo taken, or they would need to take him in. [...] They did ask for permission, but it was more, 'can we have your photo taken?'. And that followed by, 'if you don't, then we will have to take you into the station'. Of course, he bowed down to their demand... It wasn't as if it was late at night when he shouldn't have been walking the streets. It was in broad daylight". (Harris as cited in Hurihanganui & Cardwell, 2020)*

> *"Two young boys, 14 and 15, were alone when it happened to them. [...]. Standing outside [a store] waiting for their koro [grandfather], two policemen caught their eye. Before long, the officers were standing at their feet. "Where's the bag of money you stole," one officer asked, nearly shouting. The boys were surprised [and] confused. They denied knowing anything about the stolen money, but that did not convince the men in uniform [claiming that the boys] met the description of offenders they were looking for [...]. The officers collected their details, and then they asked the boys to stand still. 'We're going to take your photo now,' the officer said. 'Take your hats off and look into the lens'".* (Hurihanganui, 2021)

New Zealand law requires parental consent or a caregiver to be present when youth under the age of 17 are questioned by NZP. Arguably, this legal requirement extends to taking photographs. While it is generally legal in New Zealand to photograph people in public spaces, government agencies require a legitimate reason to do so (Privacy Commissioner, 2020). New Zealand Police initially defended their practice with the argument that section 214 of the Oranga Tamariki Act 1989 would allow them to do so. However, said section is only applicable in cases where youth are reasonably suspected of having committed an offence for which, NZP later admitted, there was no evidence (Norris & Tauri, 2022). The practice was only discontinued after a public outcry (Hurihanganui, 2022) and is currently under joint investigation by the Independent Police Conduct Authority and Office of the Privacy Commissioner.[1]

EXTRALEGAL PHOTOS AS AN ACT OF RACIALIZED STATE VIOLENCE

Although NZP denied targeting Māori youth, most of the reports that emerged via media and social media were related to Indigenous young people (Norris & Tauri, 2022). We argue that the practice constitutes an act of State violence given the history of targeting Māori youth and ongoing intergenerational trauma. Furthermore, Māori experiences of racial discrimination have been linked to elevated levels of hazardous alcohol use among Māori (Winter et al., 2019) and lower levels of physical and mental health (Harris et al., 2006).

These findings are reflective of a growing international literature that links racial discrimination to detrimental health outcomes. In Australia, Canada, and the United States, activists and academics have long recognized that the disproportionate police killing and injuring of Indigenous and Black people constitute a public health concern (George, et al., 2020). Racial profiling, hyper-surveillance, and verbal harassment by police also adversely affect the mental health and well-being of these populations. "Such encounters are linked to heightened depressive symptoms and higher rates of trauma, anxiety, and posttraumatic stress, particularly among young men" (Fleming et al. 2021, p. 2).

CONCLUSION

With regards to Māori youth, the link between racial discrimination and self-harm is particularly concerning as suicide rates for Māori youth (15- to 24-year-olds) are already twice that for non-Māori (Ministry of Health, 2021). Because racially motivated police violence and related harms have mostly been ignored by public health institutions (Jacobs et al. 2021), the police, the courts, prisons, and parole boards, Alang and colleagues (2021) call for public health work to 'include data collection, monitoring and reporting racism' (p. 818), which includes racially biased actions by police. The aforesaid arguments are also considered pertinent in the context of New Zealand where racially biased policing adversely affects racialized people and particularly Māori (Came & Griffith, 2018).

The photographing by police of Māori youth, who had not committed any offence and the storage of

their pictures in a database used to solve crimes, evidences the extent of the racially biased nature of policing in New Zealand. As the hyper-surveillance of Indigenous communities functions as a form of racial discrimination and there is growing evidence that racial discrimination is linked to detrimental health outcomes, NZP are contributing to a cycle of colonial trauma, ill health, immiseration, and death in Māori communities. While a photograph in itself may not constitute a physically abusive act, the discriminatory motivation behind taking it makes it one. The lack of accountability around indiscriminate police profiling or targeting, unwarranted data collection, and many other daily discriminations that pass under the radar constitute a public health issue and are signs of more to come. ■

NOTES

1. At the time of writing, the report was not yet available (IPCA, 2022).

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RÉSUMÉ

An Act of Racialized State Violence: New Zealand Police Take Extralegal Photographs of Māori Youth

ANTJE DECKER, ADELE NORRIS & JUAN TAURI

La « stratégie de la criminalité » racialisée en Nouvelle-Zélande date du 19e siècle et a été renforcée au fil du temps au sein de l'ensemble du système judiciaire - les tribunaux, les prisons et les commissions de libération conditionnelle. Après avoir intégré l'urbanisation massive des Māori entre la Seconde Guerre mondiale et 1966, la récession économique des années 1970 et la violence d'État multiforme infligée aux Māori, les auteurs se concentrent sur l'année 2021 pour étudier la photographie illégale d'enfants par la police néo-zélandaise comme un acte de violence d'État. Notant le ciblage croissant, la collecte injustifiée de données et de nombreux autres discriminations quotidiennes ne constituent pas seulement un problème de santé publique, mais sont des signes de ce qui nous attend.

To Cause to Feel Burdened in Spirit

CHARLES JAMIESON

In this testimonial-enriched article, the author speaks out against the intentional infliction of Spiritual loneliness on Indigenous people over time as a means of assimilation and/or genocide. Jamieson, an Indigenous prisoner having spent approximately 460 days in administrative segregation since 1996, points out that the segregation from community and 'isolation in the hole' culminate in a purposely inflicted Spiritual loneliness. Discussing the stability enjoyed by Indigenous people in their communities prior to first contact, Jamieson lists the residential school and prison as systems designed to 'break the Indian' and laments these assimilation tactics of oppression, emphasizing that they cut at the very heart of Indigenous relations with the Creator and can shatter the will to live.

The history of Indigenous people is a long story of Spiritual Loneliness and disconnection. The single most callous act that Correctional Service Canada (CSC) is responsible for perpetuating and having continued to perpetuate is the ongoing infliction of Spiritual Loneliness.

During colonization, settler society not only stole land and diminished our cultural identity, but also targeted Indigenous people by propagandizing Indigenous customs and spirituality as savage and even as devil worshipping. This continues to have a drastic effect on the treatment of Indigenous people today, who are still segregated and isolated not only from community and identity but also from our spiritual beliefs.

Given the over-all treatment of Indigenous people since first contact and over the centuries, it is curious that anyone should be taken aback when reading about the over-incarceration and mistreatment of Indigenous people in prison today.

Beginning in the 1970s, Indigenous prisoners who wanted to live their lives in accordance with the spiritual and traditional teachings brought those teachings into the penitentiary. Indigenous prisoners made it impossible for Correctional staff to put a complete stop to Indigenous inmates participating in and practicing spiritual activities. These Indigenous men and women wholeheartedly believed that being in ceremony is "never wrong". They would not stop praying or dancing just because the prison officials were telling them to stop. When these practices began, many Indigenous prisoners were subjected to punishments for engaging in spiritual ceremonies (Adema, 2014).

In my opinion, it was also at this time that prison administration and the federal government began to authorize a controlled version of Indigenous spirituality. Realizing that "those Indians" were not going to stop "praying, singing and dancing" no matter the consequences, prison officials created a deterrent allowing them to have "some control" over Indigenous prisoners who would not stop engaging in spiritual activities.

Prior to contact, Indigenous people were stable within their communities, which afforded them opportunities to participate in spiritual ceremonies and receive traditional teachings from the Elders. Indigenous communities protected their traditional spiritual teachings, which were oral and never written. Passed down to new generations by the Elders through this age-old oral tradition, Indigenous people were taught how to practice in the teachings and respect those from whom they received those teachings. These teachings were internalized over centuries into a Spiritual

commitment that being imprisoned, starved, beaten, raped, or killed cannot ever fully eradicate.

Within Indigenous communities, Elders continue to teach children that "all things have life and spirit". These young children grow up knowing that, "each one of us is born with the innate spiritual optimism and that our existence is not irrelevant but is an important part of a larger pattern of life."

A unique spirit within each of us strives to express itself to be recognized, to have a name, and a destiny.

Many Indigenous children are grateful to have been given the gift of life and are thankful they are able to comprehend the meaning of these teachings. As these children get older, they come to understand that *freedom is unavoidably experienced within boundaries or constraints – which is to say it is relative. Despite these constraints, it is fundamentally human to desire freedom.* Moreover, it is our Spiritual side that motivates us to pursue our freedom.

The two main factors have contributed to the development of Spiritual Loneliness 1) Residential Schools and 2) Federal Government assimilation through prison.

Indigenous prisoners have and continue to experience very "traumatic" incidents within penal institutions. Many of the Indigenous prisoners, prior to being locked up, had already "suffered" traumatically and had been "spiritually attacked" in the care of Residential Schools or the Child Welfare Agency (foster care). Many Indigenous people were already victims of Oppression and Spiritual Loneliness by the time they were incarcerated. Residential schools and prisons were not just forms of segregation and assimilation. They also sever connections with our Creator.

It is important to remember that, mentally and spiritually, most Indigenous prisoners had already suffered direct or indirect harms caused by Residential Schools. Many Indigenous prisoners in the penitentiary today are also already "damaged" mentally, emotionally, and spiritually. Many of these prisoners have also had a dismal education and are easily misled.

I have witnessed the mental deterioration caused by long periods of time in "isolation". The "changes" most notable in the prisoners have been their apathy towards continuing their relationships, even with other Indigenous prisoners who still engage in spiritual activities. Emotionally, these "human beings" are suffering from loneliness, not just from being away from their reserves or their family and friends, but from being in isolation, both spiritual and physical, and not having skills to deal with such complex issues.

The term "isolation" is today referred to as structured intervention units, but amongst prisoners, it is called "the hole" and can only be described as torture. For the penitentiary administration, "isolation" is the most effective way to force Indigenous inmates to begin complying with the rules, which interferes with the relationships Indigenous prisoners have with each other.

Most of the stories we hear about isolation are not being told by the people who live through the experience. I have 24-years of experience in custody with Correctional Service Canada. During this period of incarceration, I have experienced nine segregation units. Every time I was placed into a cell and the cell door closed, I immediately felt despair and I was always able to recognize the musty smell of dirt. Instinctively, I understood that I was Alone. By instinctively, what I am really saying is Spiritually. Once, as a human being, you realize that you are alone and helpless, you experience the feeling of being "worthless".

I will tell you, as anyone else who has been in segregation might, regardless of the reasons why you are in there, once the cell door closes and the guards have walked away, the only thing that you hear is silence. Any person who has been "involuntarily" placed into administrative segregation will know exactly what I have said is true. I do not misrepresent the "horrors" that Indigenous people in prison currently experience while in isolation.

A fundamental weapon used by prison staff against Indigenous people in prison is to isolate; to segregate them from all of their "resources" and their supports. After witnessing the (mental deterioration) that isolation has on Indigenous people, "connection" to their spirituality as well as personal relationships, prison officials could see that depriving an Indigenous inmate access to their spiritual ceremonies is a way of making us compliant and institutionally dependent.

Although correctional employees are "advised" to treat all prisoners with respect and dignity, some employees have attested to the ongoing abuse they themselves had meted out or witnessed. Isolation is a significant "option" for prison officials to utilize due to the significant results in segregating us from our strength and who we are as a people. Please note that not all penitentiary employees are responsible for this direct abuse but, many arguably know about it.

I am not an expert in Psychology or Sociology, but I am an Indigenous person in prison who, since 1996, has spent approximately 460 days in administrative segregation. Through these experiences, I have been exposed to Oppression and understand its destructive consequences.

I have developed an understanding that all forms of Oppression involve a denial of the individual spirit and its quest for self-expression. Ignorance, intolerance, and discrimination – all these "cruel" acts share a common element – the utter denial of the Indigenous person's relevance and worth.

The experience of Oppression is a Spiritual Death. It is the destruction of our spiritual faith in the importance of connections and the meaning of freedom and indeed erodes an important value: staying alive. "Victims" of Oppression not only lose interest in their sense of spirit and self but also find it difficult to maintain self-preservation.

If you have been made to feel irrelevant, you cannot understand why anyone could possibly love you and you anticipate betrayal from anyone who tries, including your Creator. Oppression undermines love and trust among its victims.

Eventually, the experience of Oppression becomes internalized as an accumulation of implicit limitations on freedom experienced at a subconscious level. The end result of Oppression within a correctional environment has been and continues to be self-isolation.

Within the Indigenous traditional teachings as in our dialects, there are no words to prepare a person for incarceration. We are the people of the land. The traumas that Indigenous people in prison suffer – this Spiritual Loneliness – continues to be a part of the Canadian landscape that should not be ignored. ■

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RÉSUMÉ

To Cause to Feel Burdened in Spirit

CHARLES JAMIESON

Dans cet article enrichi d'un témoignage, l'auteur s'élève contre l'infliction intentionnelle au fil du temps de la solitude spirituelle aux peuples autochtones comme moyen d'assimilation et/ou de génocide. Jamieson, un prisonnier autochtone qui a passé environ 460 jours en isolement administratif depuis 1996, souligne que la ségrégation de la communauté et « l'isolement dans le trou » aboutissent à une solitude spirituelle infligée à dessein. Parlant de la stabilité dont jouissaient les autochtones dans leurs communautés avant le premier contact, Jamieson cite les pensionnats et les prisons comme des systèmes conçus pour « briser l'Indien » et déplore ces tactiques d'oppression assimilatrices, soulignant qu'elles touchent au cœur même des relations entre les autochtones et le Créateur et qu'elles peuvent briser la volonté de vivre.

Series of paintings by Abenaki artist

Mamijo (Papillon Lune) / Kurt Nicholas Rougier

PHOTO CREDIT: The Artist [Mamijo (Papillon Lune) / Kurt Nicholas Rougier]
Contributed by the artist via Dr. Vicki Chartrand

Crow Woman©

Blackbird inhabiting the void, not knowing not knowing the clock's ticking. Selfishly keeping its equilibrium among all creatures. Experiencing simultaneously; The past, the present and future destiny... Welcoming light and shadow evenly. Swallowed by her own shade, she became a shadow of her own self. In Crow Women's eyes resides the doorway to eternity.

Keeper of all ancient wisdom and sacred medicine, she knows all laws of this magic kingdom. She's the holder of a rare and ancient metamorphosis art, studying this world good and evil, and seeing far beyond... She seeks carcasses to sanctify their flesh and bless their souls! She knows that in Ogallah's ancient scripture, it is said that: "Women of this world give birth to everything we see."

Crow Woman mournfully bowing down in prayers and speaks to Grand Mother Moon for her to welcome all those life-giving souls, listening and perceiving from them all their illusions of this life interpretations, physical & spiritual, frozen alongside this river of time.

Northerner mountain wolf is howling at the full moon, time to open the sacred bundle and hang up the bear claws in the tree of life and trace a medicine wheel in the water crystal snow... Buffalo skull, Ancestor of the prairies are whispering a prayer in my ear to all my beloved disappeared aboriginal sisters: "You are all LOVED, CHERISHED and NOT FORGOTTEN!".

Mamijo (Papillon Lune)©

PHOTO CREDIT: The Artist [Mamijo (Papillon Lune) / Kurt Nicholas Rougier]

6318 Rue St-Dominique, Montreal Quebec
H2S 3A5 Canada


WABANAKI

Indigenous Warrior Women©

This is a meditation on the active cycle of life and an experience into Shamanism frontiers. It is also an evolution between portals of sacred Mother Earth, Father Sky and the Mystic Gnomes' underground realms. The Grandmother Moon, Father Sun, all constellations of stars, wings of butterflies for transformation into the sacred Red Path, Mamijo Pugwash (moon butterfly), and the Sacred Deer which represent the spirit of the Forest and the great Manitou. The black tears are inspired by the cheetah's fur spot and the sadness of Indigenous women in this colonized and White patriarchal supremacy country they call Kanata.

Mamijo (Papillon Lune)©

PHOTO CREDIT: The Artist [Mamijo (Papillon Lune) / Kurt Nicholas Rougier]

6318 Rue St-Dominique, Montreal Quebec
H2S 3A5 Canada


WARAN-ARI

Kita Nia – Écoutes-moi© – Listen to Me

Simultanément je suis : le passé oublié, le présent qui me fuit et le futur déjà accompli…

J'habite le vide et ne connais pas le temps. La forêt d'épinettes noires m'ayant dévoilée.

Je suis devenue l'ombre de moi-même.

Je connais hier et je connais demain ainsi que toutes les lois de ce royaume et dans les yeux de mon Corbeau.

Destinée réside ma sœur Éternité.

Je vois maintenant au-delà du bien et même au-delà du mal. La métamorphose de ce qui meurt et revit…Corbeau veille sur ma carcasse, sanctifie ma chair et béni mon âme et celle de mes sœurs disparues…Ha Ho!

Ainsi, j'emporterai les pulsations de ma Mère; cette Terre, vers l'infini.

Tout ce qui est, est sorti de son ventre qui abrite la vie. Perceptions physiques émotionnelles et spirituelles, Grand-Mère Lune recueille les souvenirs de mon bref passage existentiel.

Ses rayons, mon portail que je traverse doucement. Je suis cette femme violée, assassinée et disparue. Je suis la terre qui tremble et reprend ses droits.

Je suis la Lune qui veille sur toi.

Mais surtout et toujours, une femme s'abandonnant à l'AMOUR!

Mamijo (Papillon Lune)©

PHOTO CREDIT: The Artist [Mamijo (Papillon Lune) / Kurt Nicholas Rougier]

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Le retour du Fils prodige "& prodigue"©

Huile de noix et vernie de gomme de pin.
9e Lune MMXIX

Olibamkanni (Bon voyage!) Waban Aki

Mamijo (Papillon Lune)©

PHOTO CREDIT: The Artist [Mamijo (Papillon Lune) / Kurt Nicholas Rougier]

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Dangerous Knowledge

DARYLE E. KENT
Kewatino Ininni, Anishinabé

In a high security prison since 1984, Kent reflects on the racism at school where he experienced ongoing taunts and racist slurs from the White boys. Arrested at the age of 13 for possession of a weapon after a school fight with those boys, he explains his 'colonial' trajectory through youth detention and provincial jail to federal prison where he was eventually charged with the murder of two guards. Kent laments the lack of an impartial investigative body in this country able to mandate Correctional Service of Canada (CSC) to create an environment respecting the rule of law. Kent points out that rules against racism must be made enforceable to stop the persecution of Indigenous Peoples both inside and out of the prison. Kent lost both of his parents when he was five and considers himself lucky to not have been caught in the sixties scoop. Being raised on the reserve with community and all the tools needed to live more traditionally was not the problem, but it was having to relinquish his Indigenous identity when entering White communities. While history has shown to be one continuous struggle with different phases of genocide, Kent concludes with a message of hope.

I was born on October 21, 1962 in the community of Pine Falls, in the Province of Manitoba. I was raised approximately 20 miles from the Indian Reservation of my Band, the Brokenhead Ojibway Nation and about twenty minutes from the Anishinabek at Fort Alexander today known by its original name—Sagkeeng First Nation.

PROLOGUE

In the spring of 1968 at the age of five, both my parents, my oldest sister, her husband, and several other people from our reservation were all killed in a head-on car crash. As a child, while I suffered my loss, I also did not realize the enormity of the loss to myself or my community, nor was I fully aware of the meaning of death, the consequences it would have for my family, or the families of all those lost in the crash. This tragedy occurred at the time of what has become known as the "Sixties Scoop", with so many Indigenous children again being stolen from their families. I was fortunate to have my grandmother, brother, and his wife take me in. Many of the children who lost their parents were not so fortunate and became a part of the sixties scoop generation.

RESERVES AND WAGONS

I had a good childhood on the Reservation. We were not rich but there was always food to eat and other kids my age to play with. The best times for me as a child, on the reserve, was during the summer when school was out and there was very little work to be done, other than cutting the grass or hauling water. The river served as our pool during the summer and a skating rink during the winter and we had a fun playground. There were children who had a much more difficult life on the reserve than those in my family. Some were abused in various ways or neglected, but there was one constant in all our lives, we all got along well enough, and we looked out for each other.

I never really knew what racism was until I was about ten years old and started going to school off reserve. Of the 400 students, approximately 30 of those were Indian kids. I remember that at almost every recess there would be a fight between a White kid and Indian kid. Often, these fights were the result of some White kid calling us chugs, wahoos, wagon burners, savages, or dirty Indians among others. It was the insults to our people that hurt the most. We know who we are and who our people were. Our people have done nothing to be ashamed of historically or now.

PATHWAYS TO COLONIZATION

My life on the reserve ended when I was 13 years old. I was arrested for possession of a weapon after a fight with three White boys for racist remarks

towards me. I was sent to the Manitoba Youth Center for several months.

From there, the colonial trajectory escalated to youth detention, provincial jail, to federal prison where I was eventually charged with the murder of two prison guards. I did not kill either guard but partook in the incident that resulted in their deaths. Since 1984, I have spent most of my time in the highest security prisons because I refused to admit guilt in those deaths.

When I came to prison, I read in my case management report that "I used to fight because I was ashamed of who I am". This is untrue. I fought because they had insulted my people. And yet, I cannot change the words in these reports. Many problems also go unreported in prison because we know that our complaints will be dismissed as lies at almost every level. The prison is a tyrannical dictatorship within a democracy. They can write anything they want, accuse you of anything, keep you in the most restrictive environment available, and there is nobody to hear your complaints. There are video cameras everywhere, but for "security reasons", the prisoners are not allowed to see any of the recordings to clear themselves of any accusations made by the CSC. The videos, on the other hand, will result in someone being locked up in segregation. The system is one-sided. This is what is meant by "systemic" racism, or sexism, or any other kind of built-in bias. You are guilty until proven innocent.

When I was sent to the Special Handling Unit (SHU), I chose to go into segregation as it was the only way I had to protest the wrongs committed by CSC. I was told that I would be left to sit there for as long as it took for me to learn to do what I was told before they would release me from the SHU. After nine months in SHU segregation, I was physically moved to another range. I was required to take any program, "as long as it's what they want me to do". I had to jump through hoops like a circus performer to prove my obedience.

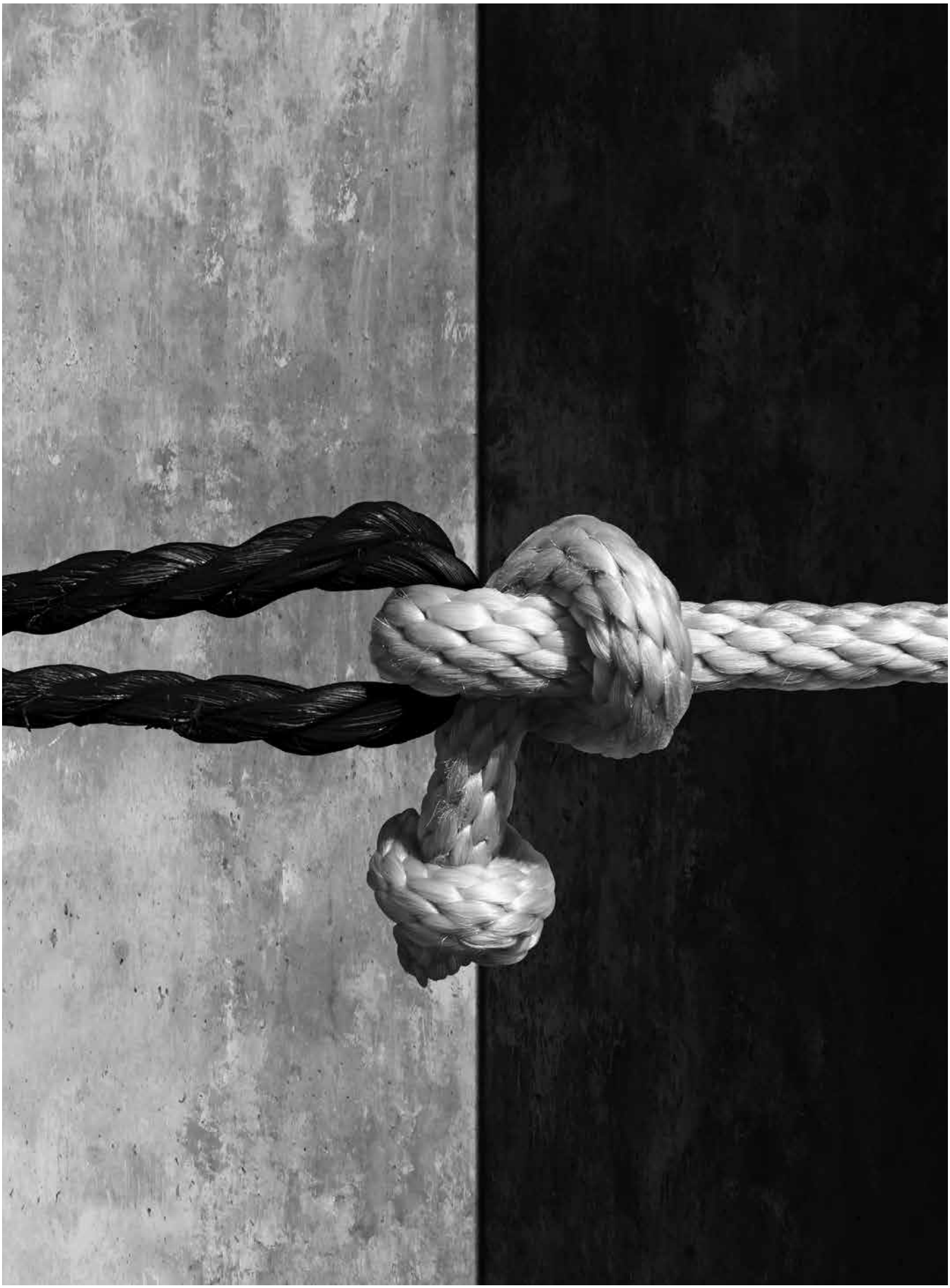
The residential schools were an attempt to destroy us as a people; now it has moved to prisons. There are no in-depth assessments of the needs of Indigenous people in prison. We are simply required to participate in programs provided by CSC to move to lower securities and hopefully to our eventual release. Some programs, however, are not even available in a prison, requiring us to transfer to other prisons.

When our people win the support and recognition of our rights in the courts, which is necessary because these rights had been denied, there are those non-Indians (settlers) that come forward and complain that their rights are being denied. These small victories, however, make it possible for our people to have a lifestyle on par with those of the dominant society. Those people who complain, for the most part, do not care about the suffering our people have endured at the hands of their government and their forefathers. Greed and selfishness in their society motivate those people to totally ignore the injustices our people have suffered.

In prison, I have learned a great deal about my people's history since the arrival of the Europeans. This is the type of history that was not taught to us in school. The historical record exists of the genocide of all those who resisted the Europeans' push for control of this continent. The Beothuk and the Yahi are two examples of tribes that did not survive, and any Indigenous Nation who fought the invasion risked the same fate. Fortunately, our people were strong willed and have a holistic view of the world. War and conflict are part of being human and we embraced that part of us in order to combat and survive early attempts at genocide. They referred to our resistance against their genocide as "savagery" and "uncivilized". Sadly, other tribes' leaders joined the Europeans not knowing what the future held or they ignored the wisdom of their Elders and Medicine People in the misguided belief they would be treated fairly and respectfully.

We are now outsiders in our own land. They speak of justice, freedom, and democracy, and the rule of law but history has shown these concepts only exist for some and not others. The courts and law schools are not places of justice; they teach rules written by those in government. If these places truly dispensed justice, then the laws prohibiting Indians from working off reserves, leaving the reserves without a pass, hiring a lawyer, or owning land would not have been legal. Unreconciled, this legal history of dispossession and genocide dirties the very idea of justice.

There is absolutely no impartial investigative body in this country with the authority to order CSC to create an environment where the prisoner will be treated fairly. There are laws and other rules that give prisoners certain rights under the "Canadian



Charter of Rights and Freedoms", but in practice these rights are ignored or suspended because we are prisoners. I have the right to make written complaints against those in CSC who I believe have done wrong but not the right to have my complaints investigated by an independent body with the authority to order CSC to correct any wrongdoing. The right of people to live their lives without persecution by their government or other citizens is a good thing but such rules must be enforceable.

My people were subjected to racist policies and those policies are still being practiced to this day. The primary example of racist and genocidal policies implemented by representatives known as Indian Agents employed by the Canadian government's Department of Indian Affairs. The name was changed to Indian and Northern Affairs and now to the more politically correct Crown-Indigenous Relations and Northern Affairs Canada, but much like the shift from segregation to structured intervention units, only the names have changed.

For my people, history has not repeated itself, it has been one continuous struggle with different phases of genocide. CSC claims to be protecting the citizens of this country from me. My people were on a quest for understanding of life and their place in it, along with the other creatures that we share this planet with. The quests of today are for money. Many are indifferent to the suffering of others. They have forgotten their humanity. And I am the one who "the people" of this society have deemed to be the threat. Most Indigenous people have been "domesticated" to the point where they are, in most cases, unable to defend themselves, even when their lives are in danger.

I was given all the tools to live like an Indian, Anishinaabe, long before I was placed in these prisons. My people and I were never welcomed into White society. We had to relinquish our identity before we could enter White communities, and we are still unwelcome. We as a people have survived through so much hardship since contact but the era of the Europeans raping our lands is coming to an end. With the awakening of the ancient teachings, the world will slowly rebuild, and so will my people.

There is hope for our future as a people and a culture, but we must move forward by looking back and acquiring the tools we will need. My people have lived in harmony for thousands of years. There is a place for us, with our reverence and knowledge of nature, in the modern world. I hope those of you who can see this will be a part of the movement forward.

EPILOGUE

After twenty or thirty years of the sixties Scoop, after a colonial trajectory of all kinds of carceral punishment and abandonment, Indigenous children are returning to their home territories, wondering where their people are and why they were abandoned. There are those who remain lost having been torn from the roots of their lives and people, some have fallen into alcohol or drugs, others have died. Some, like me, are changing the colonial trajectory. There is a saying "history is written by the victors", maybe so, but the future is still a blank page. We are a proud and strong people. ■

RÉSUMÉ

Dangerous Knowledge

DARYLE E. KENT
Kewatino Ininni, Anishinabé

Dans une prison de haute sécurité depuis 1984, Kent réfléchit au racisme qui régnait à l'école, où il subissait constamment les railleries et les insultes racistes des garçons blancs. Arrêté à l'âge de 13 ans pour possession d'une arme après une bagarre à l'école avec ces garçons, il explique sa trajectoire « coloniale » à travers la détention des jeunes, la prison provinciale et la prison fédérale où il a été accusé du meurtre de deux gardiens. Kent déplore l'absence d'un organisme d'enquête impartial dans ce pays, capable de mandater le Service correctionnel du Canada (SCC) pour créer un environnement respectant la règle de droit. Kent souligne que les règles contre le racisme doivent être rendues exécutoires pour mettre fin à la persécution des peuples indigènes à l'intérieur et à l'extérieur de la prison. Kent a perdu ses deux parents lorsqu'il avait cinq ans et s'estime chanceux à ne pas avoir été pris dans la rafle des années soixante. Ce n'est pas le fait d'avoir été élevé dans la réserve avec la communauté et tous les outils nécessaires pour vivre de manière plus traditionnelle qui a posé problème, mais le fait d'avoir dû renoncer à son identité autochtone lorsqu'il est entré dans les communautés blanches. Bien que l'histoire se soit révélée être une lutte continue avec différentes phases de génocide, Kent conclut avec un message d'espoir.

The Boy and His Sandcastle

ZAKARIA AMARA

Twelve years into a life sentence for his role in the Toronto 18 terror plot at age 20, the author remains thankful no one was killed, asks for forgiveness, and discusses his three years of pre-trial custody and six years in Canada's Super Max prison. Now in a minimum-security facility, the author shares insights into his own process of radicalization and the global issues at play. Attributing his own radicalization to a perfect storm of internal and external influences over time, Amara recalls discrimination as a child living in Jordan, Cyprus, Saudi Arabia but also in Canada, where he was not White enough to fit in. Amara recalls how news of the U.S. invasion of Iraq and resulting mass killings of innocent civilians pushed him over the radical edge. Years later, in prison, news of atrocities related to the ISIS caliphate would set him free. Amara does not blame Islam for the radicalization of Muslim people around the globe, pointing rather to the 100 years of oppression and corruption in that region and the current extreme socio-economic exclusion of Muslim people in most Western nations today.

My beloved daughter asked me to share my story with you. I am having a difficult time deciding what to write and from which point to start. Perhaps I should begin from the present and work my way back to the past.

I have been in prison for 12 years now. I received a Life sentence after pleading guilty to being one of the ringleaders in the "Toronto 18" terror plot. Thankfully, no one was physically hurt. I was 20 then, I am almost 33 now. In pre-trial custody, I was deemed a radical threat to the inmate population and so I was involuntarily placed in solitary confinement for 3 years. After receiving my sentence, I was once again considered a radical threat and sent to the Special Handling Unit, Canada's only Super Max prison (usually you have to kill or stab someone inside to be sent there). I spent six difficult years there before finally getting transferred to Millhaven maximum institution.

Based on what you just read, it is easy to imagine me as a tough, violent, angry man with a threatening demeanor. The truth is that I am exactly the opposite of that image.

Guilty, I am. Radicalized I was. Yet I still find my entire situation incredibly surreal. I often go back in time in order to retrace my steps and figure out how I ended up here. Every time I engage in this exercise, I find a young man who was caught up in a perfect storm of internal and external influences. The inevitability of it all is what I find most remarkable.

After any major terrorist attack, there is usually fierce debate about what makes individuals susceptible to radical ideologies. Unfortunately, this rarely occurs when the perpetrators are non-Muslims, such as with White supremacists. If I had a noose around my neck, and the only thing that could save my life was the answer to this apparently dumbfounding question, then I would have to say that it is the emotional state of feeling utterly worthless.

I have always felt worthless. I still struggle with this feeling to this day. Perhaps I feel this way because I carry within me a strong inner critic that has been ripping me apart since childhood. Perhaps it is due to the fact that I have always felt like an outsider. You see, even though I am a citizen of this country, I have never felt Canadian. That is because ever since I arrived here as a 12-year-old boy, in my mind – to be a real Canadian – you had to be White.

Prior to immigrating here, I lived in my mother's country of birth, Cyprus. There too I felt like an outsider since I was keenly aware that my Arab features automatically disqualified me from claiming to be Cypriot.

Prior to that, I lived in Saudi Arabia where native citizens are infamous for looking down upon all

non-Saudis. I still remember the words of a Saudi boy who referred to us Palestinians as "Phalas-Teezi" – a hybrid word that combines "Palestinian" with the Arabic word for "ass". The sad fact that I was sexually molested while living there could only have intensified my inner feelings of worthlessness and inadequacy.

Even in Jordan, my own country of birth, I never considered myself Jordanian, since I belonged to a family that originally came to Jordan as refugees after losing their land to the Israeli occupation.

Many of you have probably wondered why the Muslim world has produced so many radicalized individuals in the modern era. Blaming Islam for it is incredibly simplistic if not absolutely wrong. When I look at the oppression the people of that region have been going through for over 100 years, I cannot imagine how utterly worthless many of them are made to feel. The culprits are foreign and local governments who systematically strip the people of their dignity.

What happens to a street vendor who cannot sell his fruits without having to pay a bribe to a policeman? What happens to a young man or woman who just graduated from university but cannot find suitable employment because all the jobs have been given to those with special connections? What happens to a people who have no say whatsoever in how their governments are run and are treated like cattle if not worse? What happens to a people who have to live under the deadly shadows of Drones? What happens to a person who witnesses their entire family get wiped out by a "precise" missile strike?

Desperate for belonging to a people in my teen-age years, Islamic people were the only people I ever felt I belonged to and, as they radicalized, I radicalized with them. Bush's 2003 invasion of Iraq and its resulting massacre of hundreds of thousands of innocent Iraqis (Clifton, 2008; Kumar, 2006) represented the crossing of the radical 'Rubicon' for me. You can pretty much draw a straight line from there to my arrest in 2006.

How does it feel to be radical? You feel worthy, righteous, and heroic. You see yourself as a saviour of your people. Your mind is obsessed with injustices that they are suffering from and that is all you wish to talk about. You see the world in strictly Black and White terms. Deep inside, you suspect that there may be other colours, which subconsciously drives you to engage in constant re-enforcement of your beliefs. It is said that those who are most dogmatic are usually the least certain. A vivid depiction of this internal struggle is that of a boy who is perpetually fortifying the walls of a sandcastle built too close to the waves.

When I arrived at the Special Handling Unit, I was willing to give change a chance for the sake of my family, but unfortunately the administrators were unresponsive. Feeling rejected once again intensified my radical state, and I, in fact, became more extreme in the SHU than I ever was on the outside. I adopted a standoffish attitude towards the administrators and refused meeting my parole officer for many years.

This state of affairs continued until ISIS declared its Caliphate and news of its atrocities began streaming in. Prior to ISIS, whenever innocent people were killed, I would simply tell myself that it was "collateral damage" if those killed were non-Muslims, or a "mistake" if they were Muslims. Every atrocity committed by ISIS was like a Tsunami that would violently demolish my sandcastle and leave no trace of it behind. Yet I kept frantically rushing back to rebuild it.

Eventually the hideousness of this group led me to periods of depression that followed every massacre. At the time, I did not see my radical ideology as separate from my religion and this caused me to fear that abandoning it would lead to abandoning my faith. I also feared confronting the reality that I may have thrown my whole life away and brought so much suffering upon my family for no good cause.

Holding on became harder and harder until it finally became impossible, and I simply had to let go out of sheer disillusionment. What followed was not a free fall into a dark abyss of disbelief, but rather a surprising spiritual ascent that is best captured in a poem I wrote called "Servant of the Ever-Merciful"[1]:

> "If you are not as beautiful as the Sun
> When it spreads its light upon the face of the lands and seas
>
> If you do not flow as the full Moon does
> In the midst of darkness
> Illuminating the way for life's travelers
>
> If you are not as graceful as the lofty Clouds
> Spreading shade over life's scorched inhabitants

Raining water upon their parched lips
Bringing life to their dead lands

Then I am afraid
You have misunderstood
What it means to be
A servant of God"

I felt liberated to finally be able to see the world in its true colours. This feeling only intensified as I slowly took the shackles off one by one. This process began a few years ago and continues to this day. How do I view my experience? Despite its hardships and painful losses, I see it as a blessing. Sometimes I tell myself that I am acquiring a PhD in Life Studies from the University of the Incarcerated. I live a very meaningful life despite living behind bars, and I am incredibility optimistic about my future. To God I am ever grateful for all of this.

I ask the Canadian public to forgive me for betraying their trust and welcoming arms.
I ask the Muslim community to forgive me for causing them so much apprehension by helping to cast them under a dark cloud of suspicion.
I ask my dear parents to forgive me for breaking their hearts.
I ask my brother and sister to forgive me for causing them so much stress and sadness.
I ask my ex-wife whose loss I never recovered from, to forgive me for abandoning her and devastating her in such a way.
I ask her entire family to forgive me for turning their lives upside down.
I ask all the young men who became involved because of me to forgive me for everything.
I ask for their families' forgiveness as well.
Last but not least, I ask my beloved daughter to forgive me for leaving her without a father. Princess, when I see you in my dreams, I sometimes hold you in my arms and weep, and weep, and weep 'till I awake. Beloved, knowing what I know now, if I could go back in time to be with you, I would be there in a heartbeat. But grieve no more, for I once heard that "the Truth shall set you free". Now I know what I heard is true. ■

RÉSUMÉ

The Boy and His Sandcastle

ZAKARIA AMARA

Douze ans après avoir été condamné à perpétuité pour son rôle dans le complot terroriste de l'attentat de Toronto 18 à l'âge de 20 ans, l'auteur reste heureux que personne n'ait été tué, demande pardon, et évoque ses trois années de détention provisoire et ses six années passées dans la prison Super Max du Canada. Aujourd'hui dans un établissement à sécurité minimale, l'auteur nous fait part de ses réflexions sur son propre processus de radicalisation et sur les problèmes mondiaux en jeu. Attribuant sa propre radicalisation à une tempête parfaite d'influences internes et externes au fil du temps, Amara se souvient de la discrimination dont il a été victime enfant en Jordanie, à Chypre, en Arabie saoudite mais aussi au Canada, où il n'était pas assez blanc pour s'intégrer. Amara se souvient que la nouvelle de l'invasion de l'Irak par les États-Unis et les massacres de civils innocents qui en ont résulté l'ont fait basculer dans la radicalité. Des années plus tard, en prison, les nouvelles des atrocités liées au califat d'ISIS l'ont libéré. Amara n'attribue pas à l'islam la responsabilité de la radicalisation des musulmans dans le monde, mais plutôt aux 100 ans d'oppression et de corruption dans cette région et à l'exclusion socio-économique extrême dont sont victimes les musulmans dans la plupart des pays occidentaux aujourd'hui.

NOTES

1. You can find all my poems and stories on my website, www.ZakariaAmara.com. I try to update it every week through my family.

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"Unmanageable threats?": An examination of the Canadian Dangerous Offender designation as applied to Indigenous people

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In 2018-2019, 35.5% of people with a Dangerous Offender designation in Canada were Indigenous (Public Safety Canada, 2020, p. 117). This present research seeks to explain why this designation disproportionately targets Indigenous people by specifically examining the ways in which the courts erase settler colonialism in the decision-making process of Dangerous Offender designation hearings. The author's research shows that risk discourses dominate much of the case law reports analyzed during her study and how the impacts of settler colonialism are translated into individual risk factors in the process (Lampron, 2022). The author points out that many of the risk factors justifying the application of this designation are in fact symptomatic of settler colonialism. Lampron concludes that the unique experience of settler colonialism is either erased or translated into risk factors by various experts of the courts, which keeps alive a colonial, White-Indigenous / civilized-uncivilized paradigm putting Indigenous people at greater risk of receiving an indeterminate sentence and contributes to their high rates of incarceration.

INTRODUCTION

In 2018-2019, 35.5% of Dangerous Offender designations in Canada were given to Indigenous people while they only constituted 4.9% of the Canadian population (Public Safety Canada, 2020, p. 117). The designation is the highest security classification in the Canadian correctional system (*R v. Christensen*, 2020, p.5; *R v. Fontaine*, 2014, p.37-38) resulting in an indeterminate sentence. This article uses settler colonial theory and scholarship to analyze 15 case law reports of Dangerous Offender designation hearings to shed light on how settler colonial logics of erasure (Tuck and Yang, 2012) may contribute to Indigenous people being targeted by the designation.

A BRIEF DEFINITION OF THE DANGEROUS OFFENDER DESIGNATION

The Dangerous Offender is defined as a serious personal injury offence threatening the life, safety, physical or mental wellbeing of an individual (Criminal Code, RSC 1985, c. C-46, s. 753(1)). The Criminal Code states that an individual with a Dangerous Offender designation demonstrates a pattern of repetitive and persistent aggressive behaviour likely to cause death, injury, or severe psychological damage due to failure to succumb to "standard behavioural restraints" (Criminal Code, RSC 1985, c. C-46, s. 753(1)). The Dangerous Offender designation can also be applied to someone who shows "failure to control sexual impulses" (Criminal Code, RSC 1985, c. C-46, s. 753(1)).

To give the designation, courts must demonstrate that the individual has been convicted of a serious personal injury offence (Criminal Code, RSC 1985, c. C-46, s. 753(1)). There must also be proof that the individual showed a pattern of aggressive behaviour likely to eventually cause death, injury, or severe psychological damage and "a substantial degree of indifference on the part of the offender" (Criminal Code, RSC 1985, c. C-46, s. 753(1)). Lastly, there must be proof that the pattern of behaviour is "of such brutal nature" that future behaviour is unlikely to be controlled by "normal standards of behavioural restraints" (Criminal Code, RSC 1985, c. C-46, s. 753(1)). Individuals classed with the

Dangerous Offender designation retain it for life.

A Dangerous Offender designation can result in either a regular sentence for the offence, an additional long-term supervision order of up to ten years or, in most cases, an indeterminate sentence with no possibility of parole for up to seven years (Public Safety Canada, 2010, p. 8–9). However, most individuals who receive an indeterminate sentence never leave prison (Milward, 2014, p.657; *R v. Bird*, 2014, p.19). The Correctional Services of Canada (CSC) assert that, in 2018-2019, only 4.7% of individuals with an indeterminate sentence were released, under supervision, into the community (Public Safety Canada, 2020, p.65).

Criminal Justice and Settler Colonial Studies
Settler colonial scholars argue that settler colonial logics of erasure and assimilation are embedded in the criminal justice system (Chartrand, 2019; Morgensen, 2011; Wolfe, 2006). By drawing from settler colonial theories of erasure, I seek to understand whether such settler colonial logics could partially explain the large number of Indigenous people having the Dangerous Offender designation.

Settler colonialism is a specific form of colonialism that Wolfe (2006, p.388) defines as a structure rather than an historical event. Understanding settler colonialism as a structure emphasizes the idea that settler colonialism still exists today in our everyday practices, rather than being an event of the past. Wolfe (2006, p. 388), Morgensen (2011, p.52-54), and Tuck and Yang (2012, p.5) explain that settler colonialism is unique because settlers came to stay by making stolen land their home. This was 'justified' via indoctrination of settlers by the colonial power to believe that the Indigenous were uncivilized and needed to be 'taken over', and this ideology has remained in place in various forms. Tuck and Yang (2012, p.5) explain that settler colonialism, to achieve a goal of settlement, "requires a mode of total appropriation of Indigenous life and land" (Tuck & Yang, 2012, p.5). Wolfe (2006, p.387) refers to this process as settler colonialism's logic of elimination. In discussing the logic of elimination, Wolfe (2006, p.401-402) asserts that "assimilation can be a more effective mode of elimination than conventional forms of killing", though both have been used against Indigenous people. One of the many ways assimilation has been attempted is through colonial policies and laws, such as the *Indian Act* and the Residential School System.

Historical and ongoing colonial policies have led to intergenerational trauma and relatedly difficult conditions in Indigenous communities (Milward, 2014, p.620). It is estimated that approximately 150,000 Indigenous children were sent to residential schools where they were mentally, physically, and/or sexually abused (see Truth and Reconciliation Commission of Canada, 2015). The intergenerational trauma caused by this abuse and tearing apart of Indigenous communities is ongoing. For example, Indigenous children are still forced to leave their communities to pursue their education (see Lampron & Chartrand, 2020).

The Grand Chief and the Sioux Lookout Area Chiefs Committee on Health have declared a state of public health emergency over the number of Indigenous youths committing suicide (House of Commons Canada, 2016). While these social conditions created by colonization continue today, the response towards Indigenous people has been the use of repressive institutions, such as prisons (Chartrand, 2014; Milward, 2014; Truth and Reconciliation Commission of Canada, 2015). Many of these colonial conditions and generational trauma were observed in the case law reports analysed for this study, as discussed below.

Criminal justice practices today also contribute to the erasure of Indigenous people. Chartrand (2019, p.68) argues that "underlying structures and logics of colonialism continue to pervade criminal justice practices, albeit within diversified and fragmented forms". During the post-war era and the age of human rights, prison quietly became the new "expression of colonialism" as formal colonization practices were declining (Chartrand, 2019, p.77). The prison system became the "normal and necessary" response to the "Indian problem", which was reframed as legacies of colonialism resulting in Indigenous criminality (Chartrand, 2019, p.78). Chartrand (2019, p.78) further elucidates the systemic nature of colonialism with the assertion that situating colonialism as an event of the past allows the penitentiary to enact the same fundamental colonial logics without it being recognized as such.

As noted, an analysis of the case law reports used in the Lampron (2022) study demonstrate that factors related to the colonial conditions of separation from families have led to the application of the Dangerous Offender designation for Indigenous people. For example, 8 of the 15 individuals were

not raised by their biological parents, four grew up in the child welfare system, and the other four were raised by extended family members, such as grand-parents or aunts and uncles. Additionally, 11 of the 15 individuals were raised in households with absent fathers, which is the most common family dynamic observed in the case law reports. In *R v. Toutsaint* (2014, p.27), one of Toutsaint's parole officers expressed concern about his lack of family involvement while one of the psych experts asserted his concern "about Toutsaint's decision to have nothing to do with his family upon release as this suggests he has no community support whatsoever" (p.32).

R v. Toutsaint (2014) exemplifies how, despite family dislocation being tied to settler colonialism, Indigenous people are penalized in Dangerous Offender designation hearings for not having sufficient family support. By constructing separation from families and communities as additional risk factors that justify the application of the designation, the impacts of colonialism on the families are erased. These same colonial logics of erasure are similarly applied in other contexts including education and employment histories, substance abuse, housing, and land dispossession (see Lampron, 2022). Risk discourse translates the impacts of settler colonialism and contributes to justifying the use of the Dangerous Offender designation.

LAND DISPOSSESSION AND SPATIAL VIOLENCE

The erasure of Indigenous people throughout the country also occurs via land dispossession and spatial violence. Wolfe (2006, p.388) maintains that to invade a territory, settlers need access and dominance over the land, which is where Indigenous people become a threat. Tedmanson (2008, pp. 145–148) asserts that settler colonialism categorised Indigenous people as "quasi human" to establish a doctrine of discovery whereby no other people or forms of governance were said to exist.

Scholars such as McKittrick (2011) and Latty et al. (2016) discuss how contemporary forms of spatial violence are used to dispossess Black and Indigenous populations from their land and how it renders their spaces and bodies as "neither viable nor desirable" (Latty et al., 2016, p.141). In discussing racism against Black populations, McKittrick (2011, p.952-955) points to the prison as an extension of plantation logic but where racialized bodies are depicted as coming from delipidated and dysfunctional urban spaces and seen as belonging to the prison. As such, prisons are a continuation of the colonial spatial violence. Similarly, Latty et al. (2016) demonstrate how spatial violence is enacted on Black and Indigenous populations through the removal of or lack of access to essential services, such as potable water, food, shelter, and education. This spatial violence culminates in the death of Black and Indigenous people, but the deaths are rendered invisible because the spaces and bodies inhabiting them are considered damaged and on the path to extinction and therefore unsalvageable or underserving (Latty et al., 2016, p. 137-138). The settler colonial state creates the conditions and discourses depicting Indigenous people on the verge of extinction and use the outcome to justify further dispossession from people and land.

Similarly, the discourses identified in the case law reports construct Indigenous spaces, such as reserves and remote communities, as dysfunctional. Indigenous people who leave these spaces are also frequently constructed as unable to adapt to settler colonial spaces (i.e., the city). Many individuals in the case studies were forced to leave their communities to pursue educational or employment opportunities not available in remote Indigenous communities. In six of the cases, the communities were seen as negative influences and as risk factors that played a role in the individual's offending due to widespread community difficulties, such as substance abuse (see *R v. Fontaine*, 2014, p.6; *R v. Shanoss*, 2013, p.22; *R v. Tom*, 2017, p.21). In *R v. Shanoss* (2013, p.29), one of the psych experts recommends that Shanoss not return to his home community, even though his children reside there, because it is a "dysfunctional family and community environment where sexual boundaries have not been generally respected". This supports analyses that show how racialized spaces are often seen as "neither viable nor desirable" (see also Razack's, 2014; 2000).

The excerpts from the case law reports demonstrate how the various experts involved in Dangerous Offender designation hearings characterized Indigenous spaces and the people within them as unfavourable for rehabilitation and suggesting that Indigenous people will be better 'socialized' in prison or at the very least away from their communities. This logic reflects assimilation tropes, including how the courts enable the erasure of settler colonialism by reducing Indigenous spaces and the people within

them to being problematic and unsalvageable (Tuck & Yang, 2012, p.22). The way that Indigenous spaces are constructed in the case law reports justifies the removal of Indigenous people from their lands by either not allowing them to return or keeping them away longer, by attributing a higher risk classification that justifies the application of the Dangerous Offender designation.

The case law reports showed that once individuals from rural or remote communities moved into urban centers, they continued to face difficulties. In seven of the case law reports, the individuals experienced homelessness or issues finding stable and adequate housing. Mr. Tom moved to Vancouver from Lillooet to improve his life circumstances and get away from a gang he was a part of (*R v. Tom*, 2017, p.26). However, once out of the gang and drug trade, he had no source of income or work experience and ended up homeless (*R v. Tom*, 2017, p. 32). The case law report indicates that "Mr. Tom's counsel advised the court that Mr. Tom's difficulties stemmed from challenges adjusting to the pace of urban life after spending his entire life in Lillooet" (*R v. Tom*, 2017, p. 31). The judge applied the Dangerous Offender designation with an indeterminate sentence due in part to the difficulties he faced adjusting to urban life, concluding his level of risk cannot be addressed in the community (*R v. Tom*, 2017, p.65-66). When tracing the life trajectories of Indigenous people in these case law reports, the courts focus on individuals' "inability" to adjust to life in the city, a predominantly settler space, which suggests that Indigenous people are marked for prison.

The case studies illustrate the self-fulfilling prophecy described by Wolfe (2006, p.396) whereby the individuals who move between rural and urban spaces are punished via settler colonial institutions when, in fact, they were forced to live that compromised lifestyle because of the impacts of settler colonialism. Indigenous people who are pushed into settler spaces are perceived to threaten the boundary between dysfunctional Indigenous spaces and civilized settler spaces and are therefore more heavily policed, such as through the application of the Dangerous Offender designation (Razack, 2014; 2000). Indeed, the individuals are at risk if they return to their communities, and they are at risk when they are in urban centers because of the "inability" to adapt. As such, the application of the Dangerous Offender designation is justified, and through these discourses prison becomes a space where individuals can be re-socialized; however, they remain marked for life and in prison indefinitely.

CONCLUSION

The goal of the present research was to gain a better understanding of why Indigenous people are disproportionately targeted by Dangerous Offender designations. The analysis found that Indigenous people are targeted by the evaluation criteria, which many are more likely to satisfy due to impacts of colonialism. By situating colonialism in the past, the ongoing impact of settler colonialism is erased from the court cases. The emphasis on risk in the case law reports cited in this article individualizes Indigenous struggles and completely removes the unique context surrounding them. Similarly, the projection of Indigenous lives and communities as dysfunctional fails to consider the impacts of settler colonialism, effectively erasing it, while justifying the use of Dangerous offender designations. The findings of this research project indicate that many Indigenous people who received the Dangerous Offender designation are not, in fact, unredeemable threats. Instead, their unique circumstances stem from the impacts of ongoing settler colonialism, which are not being adequality considered by the courts. ■

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RÉSUMÉ

"Unmanageable threats?": An examination of the Canadian Dangerous Offender designation as applied to Indigenous people

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En 2018-2019, 35,5 % des personnes qui ont reçu une désignation de délinquant dangereux au Canada sont autochtones (Sécurité publique Canada, 2020, p. 117). La présente recherche vise à expliquer pourquoi cette désignation cible de façon disproportionnée les Autochtones. En examinant spécifiquement les façons dont les tribunaux effacent le colonialisme de peuplement au travers du processus décisionnel de désignation Délinquant dangereux, la recherche de l'auteure montre que les discours sur le risque dominent une grande partie des rapports de jurisprudence analysés au cours de son étude et comment les impacts du colonialisme d'implantation sont traduits en facteurs de risque individuels (Lampron, 2022). L'auteur souligne que bon nombre des facteurs de risque qui justifie l'application de cette désignation est en fait symptomatique du colonialisme de peuplement. Lampron conclut que l'expérience unique du colonialisme d'implantation est soit effacée, soit traduite en facteurs de risque par divers experts des tribunaux, ce qui maintient en vie un paradigme colonial, blanc-indigène / civilisé-non civilisé, exposant les autochtones à un risque accru de recevoir une peine de durée indéterminée et contribuant à leur taux élevé d'incarcération.

Risk tools in Canadian federal prisons: Colonial erasures through security classifications

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Sahr Malalla explores how Correctional Service Canada (CSC) has legitimated the use of actuarial instruments in its initial security classification and penitentiary placement procedure, despite known criticisms including the disproportionate number of Indigenous people imprisoned at higher security classification levels compared to their non-Indigenous counterparts. This article demonstrates how CSC appeals to justifications grounded in an actuarial rationality that facilitates the ontological erasure of Indigenous people in prison, consistent with a logic of elimination (Wolfe, 2006) inherent in settler colonial societies.

In addition to comprising over 30% of the prisoner population despite representing only 5% of the general Canadian population, Indigenous people in prison are also far more likely to receive higher security classification levels compared to their non-Indigenous counterparts (Martel et al., 2011; Office of Correctional Investigator [OCI], 2020). Classification decisions are reached, in part, through actuarial instruments that ostensibly measure a prisoner's likelihood for recidivism. Actuarial tools are structured assessment instruments comprised of various testing items that are scored by the assessor and, when totaled, intend to measure the likelihood of a particular outcome (Bourgon et al., 2018). One such tool is the Custody Rating Scale (CRS), a structured, 12-item "objective" instrument that was initially developed on a White, homogenous male prisoner population (Hannah-Moffat, 2015). It was introduced into CSC's operations in 1991 amidst a paradigmatic shift in corrections towards an "evidence-based" approach that advocates for prison programming and intervention that draw upon empirically tested covariates of crime and meta-analyses (referred to as "scientific criminology"; see Andrews et al., 1990; Cullen & Gendreau, 2001; Martinson, 1974; see also Andrews, et al., 2006; Bonta, et al., 1997).

Based on the findings of a qualitative content analysis that examined seven research documents produced by CSC on the validity and reliability of the CRS (see Malalla, 2022), this article critically examines how CSC engages rationality (that is, particular governing strategies or logics) to legitimize a use of actuarial instruments among Indigenous peoples that erases colonialism and facilitates a settler colonial "logic of elimination" (Wolfe, 2006). This article will provide a brief overview of the CRS, the rationality that underpins its use, and the strategies of elimination that can be located throughout CSC's justification techniques.

WHAT IS THE CUSTODY RATING SCALE (CRS)?

The CRS is comprised of two subscales, (1) Institutional Adjustment (IA) and (2) Security Risk (SR), that each consist of five and seven items respectively. They are intended to measure the risk an imprisoned person poses for negative or poor institutional adjustment, as well as the risk posed to the public if they escape (Rubenfeld, 2014). The Custody Rating Scale (CRS) is administered to all prisoners upon entering the prison system (CSC, 2018). When completing the CRS for an Indigenous prisoner, the assessor is required to analyze Aboriginal Social History (ASH) factors in the community (such as the residential school system, dislocation, and community fragmentation) that

may have impacted the prisoner (CSC, 2018). Based on this assessment, the caseworker recommends either a minimum-, medium-, or maximum-security rating. In rendering a final decision on the security placement of the prisoner, CSC takes into consideration the CRS scores, a caseworker's clinical appraisal, and psychological assessments, if applicable (CSC, 2018; Rubenfeld, 2014).

The purported universality of the risk factors measured by the various tools, such as the Custody Rating Scale (CRS), has been heavily contested and research has produced inconsistent findings surrounding the empirical validity for Indigenous prisoners (see Wilson & Gutierrez, 2014). Whereas some researchers denounce the use of actuarial instruments due to built-in biases and poor predictive ability for Indigenous prisoners resulting in over-classification (see Webster & Doob, 2004), proponents of the tools maintain that the Risk-Need-Responsivity (RNR) model in which actuarial instruments are based is a superior, evidence-based approach to producing efficiency and standardization in the criminal justice system (see Andrews et al., 1990; Andrews et al., 2006). Despite the variability of the tools' applicability for Indigenous prisoners, the CRS nonetheless remains part of CSC's initial intake procedures today.

DEFINING AN ACTUARIAL RATIONALITY WITHIN GOVERNMENTALITY STUDIES

On the surface, CSC's initial security classification procedure appears to exist as a necessary part of the process; the categorization of prisoners based on risk goes unquestioned, which is reflected in CSC's adamance that "the security level assigned to an offender is a *critical* element of effective correctional management" (Rubenfeld, 2014, emphasis added). Through a governmentality lens (see Malalla, 2022), however, the circular reasoning (ontological loop) that gives such practices their force and sense of immutability can be identified. Conceptualized by Foucault (1991), governmentality offers a framework for understanding how populations are specifically managed to achieve particular ends. In prisons, actuarial tools are a common way in which Correctional Service of Canada (CSC) assigns security classifications to manage potential "risk". From a governmentality framework, this purportedly "critical element" of prison management is called into question and elucidates how CSC's practices project people in prison as "risky" subjects.

Through the Custody Rating Scale (CRS), the governing of prisoners' risk is subsumed by an actuarial logic. "Risk" does not refer to some inherent "dangerousness", but rather is the result or *effect* of an accumulation of factors—a "profile"—that "render probable the occurrence of undesirable behaviour" (Castel, 1991, p. 287). In other words, the use of actuarial tables transforms the individual from a "distinct, unique person, to be studied in depth and known by his or her peculiarities" to one that is "a point plotted on an actuarial table" (Garland, 1997, p. 182). An actuarial rationality evinces characteristics of efficiency, accountability, transparency, and democratization (Dean, 2010, p. 223), all of which characterize the shift in correctional objectives from that of clinical, individualized treatment to managerialism (Feeley & Simon, 1992).

Although part of the CRS requires an analysis of Aboriginal Social History (ASH) factors for Indigenous prisoners, the resultant classification score is nonetheless based on a measurement of *risk*—an aggregate of factors—that transform Indigeneity into divisible, quantifiable criminogenic needs. Within this problematic framework of understanding, Indigenous people are not those who are subject to colonialism, but rather are a subset of the population who "suffer" from alcoholism, family disruption, low education, and the like.

HOW AN ACTUARIAL RATIONALITY AND THE "LOGIC OF ELIMINATION" COINCIDE TO DISAPPEAR INDIGENEITY

The logic of elimination, first conceptualized by Wolfe (2006), is the practice of supplanting Indigenous life with a settler society and gives coherence to the varied practices deployed by settlers to maintain dominion. These practices, which range from genocide and segregation to assimilative techniques, among many others, are eliminatory in that they actively pursue erasure of Indigeneity (Ibid., 2006). Dominant settler society operates by positioning its own security "in relation to perceptions of indigeneity as insecurity" (Crosby and Monaghan, 2012, p. 422). Expressions of Indigeneity, such as values, knowledges, and practices, are perceived as threats, and targeted for elimination through different security mechanisms to advance settler society (Ibid., p. 422).

As discussed by Chartrand (2019), the prison is a modern form of colonial expressions of control, becoming a site in which "civilizing Indigenous difference" is the rationale underpinning penal

programming specifically created for Indigenous peoples. Although Correctional Service of Canada (CSC) includes an analysis of ASH factors in the classification assessment, its continued use of actuarial tools advances a logic of elimination through assimilative techniques that merely *gesture* towards Indigenous people as having a "unique" background, bypassing and concealing any settler colonial context because of the prioritization given to prediction via statistical calculations.

Elimination may include both the physical removal of Indigenous bodies (Wolfe, 2006), such as forceful confinement on reserves, and an *ontological* removal whereby what it means to be an Indigenous person (language, culture, relationship to land) is actively eliminated from the body (Tuck & Yang, 2012) in the name of "assimilation". Actuarial instruments facilitate an ontological erasure because, as I show, the rationality that underpins its use is restricted to a scientific, empirically-based mode of thinking that assumes the *reducibility* of a propensity for criminality to a finite number of factors, thus foregoing a meaningful attention to settler colonialism as an oppressive structure that intimately conditions the lived experiences of Indigenous peoples.

Situating risk within a framework that engages settler colonialism and governmentality has been explored by Anna Stanley's (2021) work on Canada's mining sector and its impact on the visceral geographies of Indigenous peoples. Stanley (2021) denaturalizes the government's enactment of colonial violence by revealing how risk management renders social relations mutable, divisible, and comparable on the basis of mathematical continuities. This, Stanley (2021) argues, is a form of an "ontological slide" whereby risk management techniques move from the individual case to a population to determine regularities of incidences. The effect produced when predicting the risk for individuals in a population is that "extant social relations are occluded by mathematical ones" (Stanley, 2021, p. 62). An ontological slide that erases colonialism is located within CSC's practice of engaging a risk management technique that renders Indigenous people knowable only in relation to those items that comprise the scales of the actuarial instrument.

CRS'S AND THE LOGIC OF ELIMINATION

For Indigenous people in prison, an ontological slide can be located when CSC undertakes validity studies of the Custody Rating Scale (CRS), which entails carrying out statistical analyses to determine whether the tool performs similarly across prisoner groups. Through assessing the statistical significance of individual items on the scale, mathematical comparisons are made between Indigenous and non-Indigenous sample groups along the same scale items, thereby occluding *individual* sociohistorical differences and stripping the Indigenous sample group of any contextualization that speaks to colonial oppression. For example, one CSC research report (see Gobeil, 2011) compares the distribution of Indigenous and non-Indigenous prisoners using "low" and "high" scores from the CRS's subscale items.

The results are presented as percentages. The alcohol/drug use item on the IA subscale, for instance, reported that 71% of Aboriginal cases had high scores compared to 46% for the non-Aboriginal group (Gobeil, 2011). CSC moves from an individual case basis to the use of a sample population from which data is extracted and analyzed to draw conclusions about the CRS's performance. Effectively, social factors become divisible (Stanley, 2021), able to be split and transformed into numerical values for the purposes of conducting group comparisons. In so doing, CSC is *neutralizing*—erasing—sociohistorical differences and nuances that distinguish Indigenous peoples from their non-Indigenous counterparts.

Furthermore, in a report that assesses the validity of a reweighted Custody Rating Scale (CRS) for Indigenous women (see Rubenfeld, 2014), "Street Stability" on the IA subscale is evaluated along four dimensions: employment/education, marital/family adjustment, interpersonal relationships, and living arrangements. Each item is given a score of "above average", "average", or "below average". Looking at marital/family adjustment, for example, an above average rating requires the following: "[a] stable marriage (including common-law) exists. The inmate is presently supported by an intact nuclear family (includes parents, siblings, spouse and children" (CSC, 2018). For imprisoned Indigenous people who have been removed and dispossessed from families and communities, this measure is highly problematic. Monture-Angus (1999) emphasizes that "Aboriginal people do not belong to communities that are functional and healthy (and colonialism is significantly responsible for this fact)" (p. 5).

Monture-Angus (1999) puts forth the argument that assessing factors that are symptoms of colonialism does not measure risk, but rather "merely affirms that

Aboriginal persons have been negatively impacted by colonialism" (p. 5). In this way, the "breaking down" of social location and experience into measurable factors and applying them similarly across diverse groups, conceals and erases the impact of settler colonialism. Regardless of whether a caseworker considers Aboriginal Social History (ASH) factors alongside the CRS, the resultant classification score is a risk score, based on an aggregate of factors that necessarily results in a loss of information.

Further, Tuck and Yang (2012) argue that the presence of Indigeneity provokes settler anxiety, which in turn activates "settler moves to innocence", encompassing a range of "strategies or positionings that attempt to relieve the settler of feelings of guilt or responsibility without giving up land or power or privilege…" (p. 10). An instance of a settler move to innocence is referred to as "colonial equivocation", which is an ambivalence towards colonialisms (Tuck & Yang, 2012). Equivocation can look like such things as espousing "multiculturalism" and thereby collapsing all types of oppression into one and "tacking on" a gesture towards the inclusion of Indigenous peoples but deliberately overlooking the role of settler colonialism in shaping lived experiences (Tuck & Yang, 2012).

CSC exhibits such a move to innocence through its "consideration of unique factors" relevant to Indigenous prisoners without expressly naming colonialism: "…the caseworker must consider history of dislocation, unemployment due to lack of opportunity, lack or irrelevance of education, and history of substance abuse" (Barnum & Gobeil, 2012, p. 5). CSC "nods" towards Indigenous peoples as having a "unique" experience by requiring a consideration of ASH factors during the CRS assessment. These are merely listed, absent from a settler colonial context that undeniably gives rise to those circumstances (Martel et al., 2011). Colonialism is only ever gestured towards in terms of factors and never fully integrated into the CRS assessments.

Additionally, in addressing criticisms that the CRS over-classifies Indigenous peoples, CSC pursues the line of reasoning that the greater proportion of Indigenous peoples at higher security levels is due to a greater prevalence of risk factors. In this regard, the continued use of the CRS is supported (see Barnum & Gobeil, 2012; Gobeil, 2011). For example, CSC states that a "larger percentage of Aboriginal offenders were convicted of violent crimes", also explaining that this "indicates that the Aboriginal women were higher risk, which is in keeping with a higher security classification" (Barnum & Gobeil, 2012, p. 39). CSC legitimizes the use of the Custody Rating Scale (CRS) by arguing that the tool is accurately discriminating between lower and higher risk prisoners, demonstrating how CSC grounds its justification within an actuarial rationality. Bypassing any settler colonial context for why this may be the case, CSC is able to equivocate an Indigenous person's measured risk with that of a non-Indigenous person, rendering these two groups as ontologically similar (Stanley, 2021).

CONCLUSION

The unquestioning necessity that CSC has assigned to security classifications for the purposes of population management is undermined when an actuarial rationality uses a settler logic of elimination to engender an ontological erasure of colonialism. By appealing to an actuarial rationality that necessitates viewing the subject as a "profile" (Castel, 1991)—as part of a group—an individual is decontextualized from any social positioning (Hannah-Moffat, 2015) and colonialism is disappeared into the rationalities of governing the prison population. This gives way for Correctional Service of Canada to justify the continued use of actuarial instruments because it is only within a framework of actuarial-based reasoning that the CRS performs statistically well. The practices of assimilation engendered through this process proceed unfettered because of its concealment under a scientific discourse that has become widely accepted as the gold standard for achieving "effective" correctional management of those in prison. Irrespective of whether actuarial tools help reduce recidivism rates, the issue remains that CSC's move towards "incorporating" Indigenous-based policies is performative at best, and, at its worst, reproduces colonial logics that serve only to maintain CSC's "innocence" in Canada's ongoing settler colonial project. ■

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RÉSUMÉ

Risk tools in Canadian federal prisons: Colonial erasures through security classifications

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Sahr Malalla étudie comment le Service correctionnel du Canada (SCC) a légitimé l'utilisation d'instruments actuariels dans sa procédure initiale de classement sécuritaire et de placement pénitentiaire, malgré des critiques connues - notamment le nombre disproportionné d'Autochtones emprisonnés à des niveaux de classement sécuritaire plus élevés par rapport à leurs homologues non autochtones. Cet article montre comment le SCC fait appel à des justifications fondées sur une rationalité actuarielle qui facilite l'effacement ontologique des indigènes en prison, conformément à une logique d'élimination (Wolfe, 2006) inhérente aux sociétés coloniales.

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